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# SHIPPERS AND CARRIERS
# OF
# INTERSTATE AND INTRASTATE FREIGHT

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**Third Edition**

# SHIPPERS AND CARRIERS
## OF
# INTERSTATE AND INTRASTATE
# FREIGHT

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## Volume Two

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BY

**EDGAR WATKINS, LL. B.**

OF THE ATLANTA BAR


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ATLANTA

THE HARRISON COMPANY

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§ 292. **Jurisdiction of the Courts of the States to Enforce the Provisions of the Act to Regulate Commerce.**—The Act to Regulate Commerce in the rights therein specified does little more than express the law as it existed at common law. The right to reasonable rates was admittedly a common-law right, and the Supreme Court of the United States we have seen *supra,* Sec. 133 decided that equality of treatment under substantially similar circumstances was also a common-law right. The regulation of pooling, the requirement of continuous transportation, that through routes and joint rates shall be established, that tariffs shall be filed, maintained and made public, and the other limitations on the conduct of common carriers, while requiring more than was their duty at common law, are but provisions to make effective the great common-law right to reasonable charges without unjust discrimination or undue preference. These remedies and others provided in the act are in addition to, (and) not in derogation of, the common-law remedies.

Congress may provide that the judicial power of the United States shall be exercised by the Federal courts to the exclusion of any jurisdiction in the courts of the states,[1] but, as said by the Supreme Court: "If an act of Congress gives a penalty (meaning civil and remedial) to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided otherwise by some act of Congress, by a proper action in a state court."[2] In the same case the court said that the jurisdic-

1. Martin v. Hunter, 1 Wheat. 14 U. S. 304, 377, 4 L. Ed. 97; Osborn v. Bank of the United States, 9 Wheat. 738, 6 L. Ed. 204.

2. Claflin v. Houseman, 93 U. S., 3 Otto 130, 23 L. Ed. 833.

tion of the federal courts is "sometimes exclusive by implication," while in a more recent case the Supreme Court said that "jurisdiction (of the state courts) is not defeated by implication."[3] What may be stated as the rule in harmony with these decisions is, where by express enactment of the statute the jurisdiction of the state courts is excluded, or where the character of the remedy provided is such that the evident legislative intent was to exclude such courts, the Federal courts have exclusive jurisdiction; but where no such definite statement or clear legislative intent exists, the law will not be construed to exclude by implication the exercise of jurisdiction by the state courts.

The failure of a carrier to furnish a shipper coal cars for interstate shipments to which the shipper is entitled under the carriers own rule for distributing cars presents no administrative questions for determination by the Commission, and a state court has jurisdiction without previous action by such Commission of a suit to recover damages for such failure.[4] Citing the Puritan Coal case,[5] in discussing car distribution rules, and distinguishing the Abilene case,[6] the Supreme Court said:[7] "Where the assault is not against the rule, but against its unequal and discriminatory application, no administrative question is presented and the claim may be prosecuted in either a Federal or a state court without any precedent action by the Commission; and that, if no administrative question be involved, as well may be the case, a claim for damages for failing upon reasonable request to furnish to a shipper in interstate commerce a suf-

3. Galveston, H. & S. A. Ry. Co. v. Wallace, 223 U. S. 481, 56 L. Ed. 516, 32 Sup. Ct. 205; affirming 117 S. W. 169. See note 7 below.

4. Pennsylvania R. Co. v. Stineman Coal Mining Co., 242 U. S. 298, 61 L. Ed. 316, 37 Sup. Ct. 118.

5. Pennsylvania R. Co. v. Puritan Coal Mining Co., 237 U. S. 121, 59 L. Ed. 867, 35 Sup. Ct. 484.

6. Texas & Pac. R. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 51 L. Ed. 553, 27 Sup. Ct. 350, 9 Ann. Cas. 1075. The principle announced in this case applies where there is for determination any administrative question. Loomis v. Lehigh Valley R. Co., 240 U. S. 43, 60 L. Ed. 517, 36 Sup. Ct. 228.

7. Pennsylvania R. Co. v. Sonman S. C. Co., 242 U. S. 120, 124, 125 (and cases cited p. 124, 125), 61 L. Ed. 188, 37 Sup. Ct. 46.

ficient number of cars to satisfy his needs may be enforced in either a Federal or a state court without any preliminary finding by the Commission, and this whether the carrier's default was a violation of its common law duty existing prior to the Hepburn Act of 1906, or of the duty prescribed by that act."

A state court has jurisdiction to enjoin an increase in intrastate rates not approved as provided by the state statute, but such injunction cannot apply to intrastate rates proposed to be increased under specific authority of the Interstate Commerce Commission.[8]

§ 293. **Same Subject—Statutory Provisions.**—Whenever a court is named in the Acts to Regulate Commerce it is a Federal court, except in the Amendment of June 18th, 1910, to section 16, by which amendment suits on awards of damages may be filed either in a Federal court or "in any state court of general jurisdiction having jurisdiction of the parties." Section 9 of the Act provides: "That any person or persons claiming to be damaged by any common carrier subject to the provisions of this Act * * * may bring suit * * * in any district or circuit court of the United States.'"[9] Nowhere in the statute is there express prohibition against a state court exercising jurisdiction, but some of the procedure is such that it is clear that the legislative intent was to exclude the jurisdiction of the state courts.

The amendment to section 16 above shows a legislative construction indicating a necessity for a specific provision giving jurisdiction to the courts of the states. That a state court may enforce laws of Congress was held in the Second Employers' Liability cases,[10] and in the course of this chapter the cases in which the state courts have concurrent juris-

8. American Express Co. v. South Dakota, 244 U. S. 617, 61 L. Ed. 1352, 37 Sup. Ct. 656.

9. The abolition of Circuit Courts would leave this to read "District Court of the United States," Judical Code, Sec. 289.

10. Mondou v. New York, New H. & H. R. Co., 223 U. S. 1, 57, 56 L. Ed. 327, Sup. Ct. 169; reversing Hoxie v. N. Y., N. H. & H. R. Co., 82 Conn. 373, 73 Atl. 754 and affirming, Walsh v. New York, N. H. & H. R. Co., 173 Fed. 694.

diction will be stated as will also those questions over which it would seem that the state courts have no jurisdiction.

§ 294. **Same Subject—Awards of Damages.**—By the express provisions of section 16 of the Act to Regulate Commerce the state courts have jurisdiction over suits brought on an order issued by the Commission for the payment of money, although prior to the Amendment of June 18, 1910, it would seem that no such jurisdiction existed.[11] That such suits may be brought in a state court has been stated by the Supreme Court which gave the amendment to section 16 as authority for such statement.[12]

In the case in which the statement just referred to was made, suit had been brought in a state court from which it was removed to a Federal district court. The complainant alleged a finding of the Interstate Commerce Commission that a particular rate was unreasonable to a designated extent, although there had been no award of damages to the plaintiff. The cause of action, therefore, if any existed, was based upon section 8 of the Act and must have been brought under section 9 and not under section 16. Under these facts the district court held that the state court had no jurisdiction, although the Federal court would had the action been brought therein.[13] The Supreme Court, as shown *supra*, dismissed a direct writ of error thereto, holding that the jurisdiction of the Federal court was not involved and that the question was merely one where was to be determined whether or not a cause of action was stated. It has, however, been held that a suit for damages under sections 8 and 9 "could only be brought in a district or circuit (*sic*) court of the United States," and then when the reasonableness of rates was in-

11. Connor v. Vicksburg & M. R. Co., 36 Fed. 273, 1 L. R. A. 331; Kentucky & Indiana Bridge Co. v. Louisville & N. R. Co., 37 Fed. 567, 614, 2 L. R. A. 289, 2 I. C. R. 351; Van Patten v. Chicago, M. & St. P. R. Co., 74 Fed. 981. See also Sheldon v. Wabash R. Co., 105 Fed. 785.

12. Darnell v. Illinois C. R. Co., 225 U. S. 243, 56 L. Ed. 1072, 32 Sup. Ct. 760; Dismissing writ of error from the decision in Darnell v. Illinois C. R. Co., 190 Fed. 656.

13. Darnell v. Illinois C. R. Co., 190 Fed. 656.

volved only after an order by the Interstate Commerce Commission.[14]

Where suit was brought in a state court for damages for alleged discrimination prior to a determination by the Interstate Commerce Commission that unlawful discrimination existed, the Supreme Court sustained a judgment for the carrier in an opinion which would have applied with the same force had suit been brought in a Federal court.[15]

§ 295. **Same Subject—Suits for Damages against an Initial Carrier.**—At common law a carrier must transport to the end of its line, but when the commodity was delivered to the connecting carrier in good order, its liability ceased, unless it contracted to deliver at the point of final destination, and even when such a contract was made, by the same contract the carrier could limit its liability to its own line. Where commodities were transported over several lines and damage resulted, the shipper was frequently unable to prove which particular carrier was liable for the loss or injury.[16] The last connecting carrier receiving goods "as in good order" was presumptively liable for the damage. This is a statute in Georgia.[17] To make it possible for shippers to collect for loss and damage and at the same time to allow carriers to adjust between themselves the loss so that the innocent would not suffer, the Amendment of 1906, known as the Hepburn Act, gave the shipper the right to recover for loss or damage against the carrier receiving the commodity for shipment.[18] Speaking of this provision, the Supreme Court said: "The cause of action was the loss of plaintiff's property * * *

14. Mitchell Coal & Coke Co. v. Penn. R. Co., 230 U. S. 247, 57 L. Ed. 1472, 33 Sup. Ct. 916.

15. Robinson v. Baltimore & O. R. Co., 222 U. S. 506, 56 L. Ed. 288, 32 Sup. Ct. 114; affirming same styled case, 64 W. Va. 406, 63 S. E. 323. See also Loomis v. Lehigh V. R. Co., 240 U. S. 43, 60 L. Ed. 517, 36 Sup. Ct. 228.

16. Hutcheson on Carriers, 3d Ed., Sec. 225 *et seq.*

17. Georgia Code 1910, Sec. 2752.

18. An excellent statement of the reasons for this amendment was made by Judge Speer in Riverside Mills v. Atlantic C. L. R. Co., 168 Fed. 987, 990, 991. Except as to attorney's fees this case was affirmed, Atlantic C. L. R. Co. v. Riverside Mills, 219 U. S. 186, 55 L. Ed. 167, 31 Sup. Ct. 164, 31 L. R. A. (N. S.) 7. See also *post*, Sec. 439, and Wood-

and that loss is in no way traceable to the violation of any provision of the Act to Regulate Commerce." [18]

There is no doubt that in suits under this provision against an initial carrier for loss or damage to freight action is maintainable in state courts.[20]

That suits under this provision may be brought in state courts does not deprive the Federal courts of jurisdiction. State and Federal courts have concurrent jurisdiction. Questions arising under the Carmack Amendment and the Cummins Amendments thereto, these amendments are now part of Transportation Act 1920, are Federal questions and appeals may be taken from the highest state courts to the Supreme Court of the United States.[21] Mr. Justice Fish of the Supreme Court of Georgia citing this section and old note 15, new note 20, holds that shippers were not limited to suit against the initial carrier. If the suit is based on

ruff v. Atlantic C. L. R. Co., 138 Ga. 763, 76 S. E. 45, citing Sec. 201 of the first Ed. of this book.

19. Atlantic C. L. R. Co. v. Riverside Mills, *supra*.

20. Galveston, H. & S. A. Ry. Co. v. Wallace, 223 U. S. 481, 56 L. Ed. 516, 32 Sup. Ct. 205; affirming—117 S. W. 169; Robb v. Connally, 111 U. S. 624, 637, 28 L. Ed. 542, 4 Sup. Ct. 544; Cases brought in state courts: St. L. S. W. Ry. Co. v. Alexander, 227 U. S. 218, 57 L. Ed. 486, 33 Sup. Ct. 245; Wells, Fargo & Co. v. Neiman-Marcus Co., 227 U. S. 469, 57 L. Ed. 600, 33 Sup. Ct. 267; Wells, Fargo & Co. v. Neiman-Marcus Co., 125 S. W. 614; Norfolk & W. Ry. Co. v. Dixie Tobacco Co., 228 U. S. 593, 57 L. Ed. 980, 33 Sup. Ct. 609, 111 Va. 813, 69 S. E. 1106; Southern Pac. Co. v. Crenshaw, 5 Ga. App. 675, 63 S. E. 865. See also cases cited, and Central of Ga. Ry. Co. v. City Mills Co., 128 Ga. 841, 58 S. E. 197; Atlantic C. L. R. Co. v. Henderson, 131 Ga. 75, 61 S. E. 1111; Southern Ry. Co. v. Frank, 5 Ga. App. 574, 63 S. E. 656.

21. See Sections 439 and 440 *post*. Georgia F. & A. R. Co. v. Blish Milling Co., 241 U. S. 190, 60 L. Ed. 948, 36 Sup. Ct. 541, affirming Georgia Court of Appeals, same styled case, 15 Ga. App. 142, 82 S. E. 784. In suits for undercharges of freights on interstate shipments the Federal courts have concurrent jurisdiction with state courts and a Federal question is involved which may be appealed from a state court of final resort to the Supreme Court. Pittsburg C. C. & St. L. R. Co. v. Finck, 250 U. S. 577, 63 L. Ed. 1151, 39 Sup. Ct. ——; Wells Fargo & Co. v. Cuneo, 241 Fed. 726, 727. Duties of carriers under the statute with reference to notifying consignees stated. Stoddard Lumber Co. v. Or. Wash. & N. R. Co., 84 Or. 399,

the proviso leaving effective "any remedy or right of action * * * under existing law" there is no Federal question, as jurisdiction depends upon the general law."[22]

§ 296. **Compelling a Common Carrier to Transport.**—A shipper has a right to have his commodities transported by a common carrier. This right as to interstate shipments may not be taken away by a state statute, and a shipper seeking relief because of a refusal of a carrier to accept interstate shipments may invoke the jurisdiction of a state court, the question involved being one of general law. This principle was held in a case brought by a manufacturer of intoxicating liquors to compel the transportation of his product in interstate commerce. The suit was brought in a state court and removed to a Federal court; the jurisdiction of the latter court therefore rested upon the original jurisdiction of the state court. While the question of the jurisdiction of the state court was not discussed, the jurisdictional question raised being the claim that no court had jurisdiction prior to action by the Interstate Commerce Commission, the fact that jurisdiction was retained and relief granted was a holding that the state court had jurisdiction.[23]

When a carrier engaged in interstate commerce violated its common-law duty to treat all shippers alike by refusing to transfer cars between a flour mill and the line of a connecting

165 Pac. 363, 4 A. L. R. 1275. The question arising under a law regulating commerce, Federal District Courts have jurisdiction regardless of the amount involved. Judical Code, Sec. 24, Louisville & N. R. Co. v. Rice, 247 U. S. 201, 62 L. Ed. 1071, 38 Sup. Ct. 429. There is no Federal question on causes of action arising before the date of the enactment of the Carmack Amendment. Missouri K. & T. R. Co. v. Sealy, 248 U. S. 363, 63 L. Ed. —, 39 Sup. Ct. —. The Carmack Amendment does not apply to passenger traffic, hence injury to passengers is not a Federal question. Chicago R. I. & P. R. Co. v. Maucher, 248 U. S. 359, 63 L. Ed. —, 39 Sup. Ct. —.

22. Central of Ga. Ry. Co. v. Yesbrik, 146 Ga. 769, — S. E. —. This opinion while having support in the language in the Blish Case *supra* is unsupported by the Act or by authority. Probably the learned state Judge relied on the reservation of common law rights and not on the Carmack Amendment. See Sections 439 and 440 with annotations *post*.

23. Louisville & N. R. Co. v. F. W. Cook Brewing Co., 172 Fed. 117, 96 C. C. A. 322, 40 L. R. A.

carrier, a state court had jurisdiction to compel a performance of this duty, as least until Congress or the Interstate Commerce Commission had taken specific action."[24] This rule would hardly apply now as to interstate commerce because Congress has enlarged the jurisdiction of the Commission in this respect."[25]

§ 297. **Jurisdiction—General Statement.**—Judicial power may be exercised to enforce rights under the Commerce Acts sometimes without prior action by the Interstate Commerce Commission and sometimes only after the Commission has acted and to enforce such action or to determine the legality thereof.

That section 9, giving a person damaged by violation of the Act the option to bring complaint before the Commission or suit in a district or circuit court, and section 22 providing that common-law remedies were neither abridged nor altered, should be construed in connection with the whole Act, and that as so construed the courts had no jurisdiction to determine whether a rate published as prescribed by law was unlawful, was held by the Supreme Court in the Abilene case.[26]

(N. S.) 798; affirming same styled case, 223 U. S. 70, 56 L. Ed. 355, 32 Sup. Ct. 189. Where nothing but the common law duty to furnish cars is involved, the state courts have jurisdiction to maintain suits for damages for a failure to perform that duty. Penn. R. Co. v. Puritan Coal Co., 237 U. S. 121, 59 L. Ed. 867, 35 Sup. Ct. 484, affirming Penn. R. Co. v. Puritan Coal Co., 237 Pa. 420, 85 Atl. 426, Ann. Cas. 1914B 37; Illinois C. R. Co. v. Mulberry Hill Coal Co., 238 U. S. 275, 59 L. Ed. 1306, 35 Sup. Ct. 760; affirming Illinois C. R. Co. v. Mulberry Hill Coal Co., 257 Ill. 80, 100 N. E. 151.

24. Lovelace Flour Mills Co. v. Mo. Pac. Ry. Co., 74 Kans. 808, 88 Pac. 72; affirmed, Mo. Pac. Ry. Co. v. Lovelace Flour Mills Co., 211 U. S. 612, 53 L. Ed. 352, 29 Sup. Ct. 214.

25. Baltimore & O. R. Co. v. United States ex rel. Pitcairn Coal Co., 215 U. S. 481, 54 L. Ed. 292, 30 Sup. Ct. 164; reversing United States ex rel. Pitcairn Coal Co. v. Baltimore & O. R. Co., 165 Fed. 113, 91 C. C. A. 147, and see *post*, this chapter, Secs. 297, 299. But when the suit related "solely to intrastate transportation," the state court may enforce a duty to make connections, Chicago, M. & St. P. Ry. Co. v. Iowa, 233 U. S. 334, 58 L. Ed. 988, 34 Sup. Ct. 592; affirming same styled case, 152 Iowa 317, 130 N. W. 802. Secs. 12, 13, *supra*.

26. Texas & Pac. Ry. Co. v. Abi-

There are sections of the Act giving jurisdiction to the courts without prior action by the Commission. Cases arising thereunder will be discussed in the course of this chapter. The principle determining the circumstances under which the Commission alone can act cannot be better or more briefly stated than by copying from an opinion of the Supreme Court written by Mr. Justice Lamar. He said:

"Under the statute there are many acts of the carrier which are lawful or unlawful according as they are reasonable or unreasonable, just or unjust. The determination of such issues involves a comparison of rate with service, and calls for an exercise of the discretion of the administrative and rate-regulating body. For the reasonableness of rates, and the permissible discrimination based upon difference in conditions are not matters of law. So far as the determination depends upon facts, no jurisdiction to pass upon the administrative questions involved has been conferred upon the courts. That power has been vested in a single body so as to secure uniformity and to prevent the varying and sometimes conflicting results that would flow from the different views of the same facts that might be taken by different tribunals."[27]

In cases where prior action of the Interstate Commerce Commission is not necessary, and when the statute does not exclude the state courts, and in cases where the suit is based on a common-law right, the state courts may exercise jurisdiction.[28]

This principle is illustrated by decisions holding that the application[29] or the interpretation[30] of a tariff provision or of

lene Cotton Oil Co., 204 U. S. 426, 51 L. Ed. 553, 27 Sup. Ct. 350.

27. Penn. R. Co. v. Int. Coal Co., 230 U. S. 184, 57 L. Ed. 1446, 33 Sup. Ct. 893.

28. Starks Co. v. Grand Rapids & I. Ry. Co., 165 Mich. 642, 131 N. W. 143; Hardaway v. So. Ry. Co., 90 S. C. 485, 75 S. E. 1020; Lilly Co. v. Northern Pac. Ry. Co., 64 Wash. 689, 117 Pac. 401; Kansas City So. Ry. Co. v. Tonn, 102 Ark. 20, 143 S. W. 577; Chicago, R. I. & P. Ry. Co. v. Lena Lumber Co., 99 Ark. 105, 137 S. W. 562; Central of N. J. R. Co. v. Hite, 166 Fed. 976. Cases where jurisdiction was held to be exclusively in the Federal courts: Pittsburg C. C. & St. L. Ry. Co. v. Wood, 84 N. E. 1009; Notes 4, 6, 23 & Sec. 292, *supra*.

29. Pennsylvania R. Co. v. Stineman Coal Mining Co., 242 U. S. 298, 61 L. Ed. 316, 37 Sup Ct. 118.

30. Barret v. Gimbrell Bros. 226 Fed. 623, 625, 631, 141 C. C. A.

a carrier's rule presents a judicial question, which a court, state or Federal, may determine; but that the reasonableness of rules and practices must as to commerce within its jurisdiction first be determined by the Interstate Commerce Commission.[31]

§ 298. **Commerce Court.**—By the amendment of 1910 a Commerce Court was created and given exclusive jurisdiction as follows:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than that for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the Act entitled "An Act to further regulate commerce with foreign nations and among the states," approved February 19, 1903, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section 20 or section 23 of the Act entitled "An act to regulate commerce," approved February 4, 1887, as amended, are authorized to be maintained in a circuit court of the United States."[32]

This court was by a provision of the Appropriations Act approved October 22, 1913, "abolished from and after December 31, 1913, and the jurisdiction vested in said Commerce Court * * * is (was) transferred to and vested in the several district courts of the United States;" and it was further provided that "the procedure in the district courts

379. National Elevator Co. v. Chicago, M. & St. P. Ry. Co., 246 Fed. 588, — C. C. A. —. Appeal to Supreme Court dismissed, 249 U. S. 585, 63 L. Ed. —, 39 Sup. Ct. —.

31. Montgomery v. Chicago, B. & Q. R. Co., 228 Fed. 616, 143 C. C. A. 138. Chesapeake & O. C. C. Co. v. Toledo & O. C. Ry. Co., 245 Fed. 917, 158 C. C. A. 205.

32. Act June 18, 1910, chap. 309, 36 Stat. at L., p. 539, Secs. 1 to 6 incl. Judicial Code, Secs. 200 to 214, inclusive.

in respect to cases of which jurisdiction is conferred upon them by this act shall be the same as that heretofore prevailing in the Commerce Court.'' [33]

The procedure in the district courts in cases in which jurisdiction formerly existed in the Commerce Court as well as the procedure in other cases arising under the Act to Regulate Commerce will be discussed in subsequent sections of this chapter.

§ 298A. **General Jurisdiction of Federal District Courts.**— Judicial Code section 24, paragraph 8, gives the District Courts of the United States, regardless of "the sum or value of the matter in controversy," jurisdiction "of all suits and proceedings arising under any law regulating commerce, except those suits and proceedings exclusive jurisdiction of which has been conferred upon the Commerce Court." The exception stated, as appears from section 298, *supra* no longer obtains, and the District Courts now have all jurisdiction formerly granted to the Commerce Court.

The act to regulate commerce requires carriers to file, in the form prescribed by the Interstate Commerce Commission, tariffs of "rates, fares and charges" and the carriers cannot "charge or demand or collect or receive a greater or less compensation" than is fixed in such tariff.[34]a. When a carrier collects more than the tariff rate, the shipper may sue for the overcharge, when less is collected the carrier may sue the shipper. In both cases the District Courts of the United States have jurisdiction, concurrent with the state courts, however small the amount involved.[34] The Transportation Act 1920 leaves jurisdiction as theretofore in the United States District Courts, concurrently with the state courts, to determine rights growing out of Federal control.[35] Para-

33. For a discussion of the procedure in the Commerce Court, see article thereon by the author hereof in Standard Encyclopedia, of Procedure, Vol. 5, p. 153.

33 A. Sections 358, 364 *post*.

34. Note 21, *supra*.

35. Appendix one, *post*, Transportation Act 1920, Sec. 206. For a discussion of whom to sue under Section 10 of Federal Control Act see article by author hereof Central Law Journal Vol. 88 pp. 100 and 157 and Vol. 90 page 245; McGregor v. G. N. Ry. Co., — N. D. —, 172 N. W. 841, 4 A. L. R. 1635 and notes.

graph 1 (a) of Sec. 24 of the Judical Code gives District Courts general jurisdiction when the amount in controversy exceeds the value of $3000.00, exclusive of interest and costs, when the suit, (a) "arises under the constitution or laws of the United States, or treaties made, or which shall be made under their authority."

§ 299. **Jurisdiction of the Courts of the United States to Compel the Attendance of Witnesses before the Commission and Enforce Obedience to Act.**—Upon request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act. In case of disobedience of the *subpœna* of the Commission, it may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of the Act to Regulate Commerce. And any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a *subpœna* issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission and produce books and papers if so ordered and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Section 9 of the original Act provides that certain named officers and agents shall testify and that "the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding." The Supreme Court having held that the law must give the witness absolute immunity from prosecution before he could be compelled to testify,[36] the Compulsory Testimony Act,[37] the

36. Counselman v. Hitchcock, 142 U. S. 547, 35 L. Ed. 1110, 12 Sup. Ct. 195.

37. Sec. 479, *post*.

Immunity of Witnesses Act, [38] and section 3 of the Elkins Act[39] met this condition and a witness may be required to testify as provided in those statutes,[40] subject of course to the rule that the testimony is relevant to a question over which the Commission has jurisdiction.[41]

§ 300. **Enforcement of Forfeitures.**—Section 16 of the Act provides for forfeitures for any neglect to obey an order of the Commission made under authority of section 15. A forfeiture is provided for failure to comply with the duties of carriers under the valuation Act,[42] as also under the government-aided railroad and telegraph Act.[43] A carrier who after written request to quote a rate refuses so to do or misquotes the rate is subject to a penalty of $250.00.[44]

These forfeitures are recoverable in a suit in court in the name of the United States brought in the district where the carrier has its principle office, or through which the road runs.

It is the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.[45]

§ 301. **Mandamus.**—Section 19A of the Act gives jurisdiction to the district courts of the United States upon application of the Attorney General at the request of the Commission to issue a writ or writs of mandamus to compel a compliance with the provisions of that section, and general authority to be exercised in like manner is give to enforce by mandamus compliance with any of the provisions of the Act. This general authority was conferred by the amendment of

38. Sec. 480, *post*.

39. Sec. 457, *post*.

40. Brown v. Walker, 161 U. S. 591, 40 L. Ed. 819, 16 Sup. Ct. 644.

41. Int. Com. Com. v. Brimson, 154 U. S. 447, 38 L. Ed. 1047, 14 Sup. Ct. 1125; 4 I. C. R. 545; Int. Com. Com. v. Baird, 194 U. S. 25, 48 L. Ed. 860, 867, 24 Sup. Ct. 563; Harriman v. Int. Com. Com., 211 U. S. 407, 419, 420, 53 L. Ed. 253, 29 Sup. Ct. 115. See also Sec. 219, *ante*, and United States v. Skinner, 218 Fed. 870.

42. *post*, Sec. 384.

43. Sec. 474, *post*.

44. Sec. 6 of Act; Sec. 368, *post*.

45. Sec. 16 of Act; *post*. Sec 413.

1906, to meet a decision of the Supreme Court holding that no jurisdiction existed to compel a carrier to file reports with the Commission, although the court stated that Congress could confer such authority.[46]

District courts of the United States have jurisdiction upon the relation of any person, firm, or corporation alleging a violation of the provisions of the Act which prevents the relator from having interstate traffic moved by a common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ. The writ of mandamus is cumulative and may issue upon such terms as the court may prescribe, notwithstanding there may be undetermined questions of fact as to the proper compensation to the carrier.[47] The remedy is limited to compelling the performance of duties which are either so plain as not to require previous action by the Commission or which plainly arise from some provision of the statute or existing order of the Commission within the lawful scope of its authority.[48] This writ, however, cannot issue to prevent undue discrimination prior to action by the Commission determining that the particular acts complained of are unlawful. When it is the duty of the Interstate Commerce Commission to act, action may be compelled by the writ.[49]

§ 302. **To Enforce Rights Under the Act to Aid Railroads and Telegraph Companies.**—By section 4 of the act of August

46. United States ex rel. Knapp v. Lake Shore & M. S. Ry. Co., 197 U. S. 536, 49 L. Ed. 870, 25 Sup. Ct. 538, citing Kendall v. United States, 12 Pet., 37 U. S. 584, 9 L. Ed. 1181; United States v. Schurz, 102 U. S. 378, 26 L. Ed. 167. See under present law, Int. Com. Com. v. Goodrich Transit Co., 224 U. S. 194, 56 L. Ed. 729, 32 Sup. Ct. 436; Kansas City So. Ry. Co. v. United States, 231 U. S. 423, 58 L. Ed. 296, 34 Sup. Ct. 125.

47. Sec. 23 of Act; Sec. 445, *post*.

48. See note 25, *supra*.

49. Int. Com. Com. v. Humbolt Steamship Co., 224 U. S. 474, 56 L. Ed. 849, 32 Sup. Ct. 556; af-

7, 1888, entitled "An act to aid in the construction of a railroad and telegraph lines," etc.,[50] it is made the duty of the Attorney General of the United States by proper proceedings to protect and enforce the rights of the United States thereunder. This section makes no provision concerning jurisdiction to enforce these rights and, under the rule hereinbefore stated, section 292, it would seem that the Attorney General might file suit in a state court if he chose so to do.

The next section giving a right to sue for penalties and damages prescribes that the "action for damages" may be brought in the "district court of the United States in any state or territory in which any portion of the road or telegraph line of said company may be situated." In construing this statute it was held that the special remedy provided did not exclude the equitable remedies, for, said the court: "It is not enough that there is a remedy at law. It must be plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration as the remedy in equity."[51]

§ 303. **Injunctions in Aid of Enforcement of Act.**—An order of the Commission "regularly made and duly served" may be enforced by the district courts of the United States at the suit of the United States or any party injured by a violation of such order.[52]

The district courts of the United States sitting in equity may restrain carriers subject to the provisions of the Commerce Acts from charging less than the legally published rates and from committing any discrimination forbidden by law, and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or state, it may be dealt with, inquired of, tried, and determined in either such judicial district or

firming same styled case, 37 App. D. C. 266.

50. Sec. 473, *post*.

51. United States v. Union Pac. R. Co., 160 U. S. 1, 16 Sup. Ct. 190, 40 L. Ed. 319.

52. Sec. 16 of Act amended by the District Court Act, by substituting District for Commerce Court, *post*, Sec. 407.

state, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporation parties thereto as the court may deem necessary.

District attorneys, when directed by the Attorney General, are required to institute and prosecute such proceedings, which shall not preclude a suit for damages by the party injured.[53]

Under this provision, express companies were enjoined at the suit of the United States from giving or using franks.[54]

Rebating may be enjoined,[55] and the practice of paying for transportation in advertising, being an illegal discrimination, could be and was enjoined.[56] Injunction was sought against alleged violation of the commodities clause of the act.[57] Injunctions against discriminations were granted prior to the date of the Act to Regulate Commerce.[58]

§ 304. **Injunctions against Unlawful Rates and Practices.** —Prior to the amendment of 1910, which gave the Commission power to suspend tariffs affecting rates or increasing rates, it was a mooted question as to whether, before action by the Commission, a court could enjoin a rate or practice contained in a legally filed tariff. Rates and practices inaugurated before the effective date of that amendment

53. Sec. 3 Elkins Act, Sec. 456, *post*.

54. United States v. Wells-Fargo Express Co., 161 Fed. 606; approved, American Ex. Co. v. United States, 212 U. S. 522, 53 L. Ed. 635, 29 Sup. Ct. 315.

55. United States v, Milwaukee Refrigerator & Transit Co., 145 Fed. 1007.

56. Chicago, Ind. & L. Ry. Co. v. United States, 219 U. S. 486, 55 L. Ed. 305, 31 Sup. Ct. 272, citing and following Louisville & N. R. Co. v. Mottley, 219 U. S. 467, 55 L. Ed. 297, 31 Sup. Ct. 265; United States v. Baltimore & O. R. Co., 225 U. S. 306, 56 L. Ed. 1100, 32 Sup. Ct. 817.

57. United States ex rel. Atty. Gen. v. Delaware & H. R. Co., 213 U. S. 366, 53 L. Ed. 836, 29 Sup. Ct. 527; United States v. Lehigh Valley R. Co., 220 U. S. 257, 55 L. Ed. 458, 31 Sup. Ct. 387.

58. Coe v. Louisville & N. R. R. Co., 3 Fed. 775; So. Ex. Co. v. Memphis & L. R. R. Co., 8 Fed. 799, 2 McCray 570, approved, So. Ex. Co. v. St. L. I. M. & S., 10 Fed. 210, 3 McCray 147; reversed,

could not be held unlawful by the Commission until after a full hearing. When after such hearing the rate or practice was declared illegal, damage could be awarded, but this remedy was inadequate. Each individual had to show the amount of his damages and had to pay the unlawful rate until it was decided unlawful after a hearing which sometimes took years to conclude. In a well considered case it was said: "A denial of the entire right of service by a refusal to carry differs, if at all, in a degree only, and in the amount of damages done, and not in the essential character of the act, from a denial of the right in part by an unreasonable discrimination in terms, facilities or accommodations."[59]

Injunctions were granted prior to the enactment of the Act to Regulate Commerce as has been shown in the next preceding section. The Supreme Court cited a case in which an injunction had been granted against unlawful discrimination,[60] and assumed for the purpose of that decision that rights to a legal rate could be "enforced by a bill in equity."

Since the Act to Regulate Commerce was passed injunctions have been granted by different district judges, in some of which cases the district courts were affirmed by

but not on this point, Memphis & L. R. Co. v. So. Ex. Co., 117 U. S. 1, 29 L. Ed. 791, 6 Sup. Ct. 542, 628; Menacho v. Ward, 27 Fed. 529, 23 Blatchf, 502; Watson v. Sutherland, 5 Wall. 74, 72 U. S. 74, 18 L. Ed. 580.

59. McDuffie v. Portland & R. R. Co., 52 N. H. 430, 13 Am. Rep. 72.

60. Central Stock Yards Co. v. Louisville & N. R. Co., 192 U. S. 568, 570, 48 L. Ed. 565, 569, 24 Sup. Ct. 339, citing Interstate Stock Yards Co. v. Indianapolis U. Ry. Co., 99 Fed. 472.

61. Injuction granted Tift v. So. Ry. Co., 123 Fed. 789, 138 Fed. 753, affirmed So. Ry. Co. v. Tift, 148 Fed. 1021, 206 U. S. 428, 51 L. Ed. 1124, 27 Sup. Ct. 709; the affirmance, however, was based upon a stipulation in judicio; Toledo A. A. & N. M. Ry. Co. v. Penn. Co., 54 Fed. 730, 19 L. R. A. 387, 5 I. C. R. 545, 22 U. S. App. 561, citing Coe v. Railroad Co., 3 Fed. 775; Chicago & A. Ry. Co. v. New York, L. E. & W. Ry. Co., 24 Fed. 516; Wolverhampton & W. Ry. Co. v. London & N. W. Ry. Co., L. R. 16, Eq. 433; Denver & N. O. R. Co. v. Atchison, T. & S. F. Ry. Co., 15 Fed. 650; Scofield v. Railway Co., 43 Ohio St. 571, 3 N. E. 907; Kalispel Lumber Co. v. Great N. Ry. Co., 157 Fed. 845; Kiser v. Central of Ga. Ry. Co., 158 Fed. 193; Northern Pac. Ry. Co. v. Pacific Coast Lumber Mfg.

the circuit court of appeals.[61] In the Macon Grocery Co. case,[62] the question was presented to the Supreme Court and not decided, the circuit court of appeals having been affirmed because the venue had been improperly laid. Mr. Justice Harlan, dissenting, thought that the decision should have been placed on the Abilene case. The question was, therefore, not defintely determined by the Supreme Court.

§ 305. **Same Subject—Conclusion.**—In the first edition of this book published in 1908 it was said: In view of the language used in the Tift case, it cannot be said that the Supreme Court has definitely determined the question as to whether or no the United States courts may, without previous action by the Commission, enjoin an illegal rate already in existence, or enjoin the putting in effect a proposed rate claimed to be illegal. The Supreme Court does hold that the Abilene case is not authority against such jurisdiction, and it would seem that a stipulation of counsel could not confer jurisdiction on a court unless the court at least had jurisdiction over the subject-matter. The question must be deter-

Asso., 165 Fed. 1; Macon Grocery Co. v. Atlantic C. L. R. Co., 163 Fed. 738. Injunction denied: Potlatch Lumber Co. v. Spokane Falls & N. Ry. Co., 157 Fed. 588; but that decision was placed on the ground that the alleged rate was already in force; Jewett Bros. & Jewett v. Chicago, M. & St. P. Ry. Co., 156 Fed. 160, but sustaining the jurisdictional right. Great N. R. Co. v. Kalispel Lumber Co., 165 Fed. 25; on the ground that the rate was effective before an application for injuction was made. Atlantic C. L. R. Co. v. Macon Grocery Co., 166 Fed. 206, 92 C. C. A. 114; reversing the District Judge. See also citing cases Long v. So. Ex. Co., 201 Fed. 441. Citing cases some affirming and some denying jurisdiction to grant an injunction prior to the amendment of June 18, 1910, and holding that since that amendment: "which confers upon the Interstate Commerce Commission the power to suspend such rates or the enforcement of such rates until a full investigation on the part of the Commission. The point here involved is whether this remedy is exclusive or not — whether it ousts the United States Courts of their general equity jurisdiction on that particular subject. The court is inclined to think the intention of Congress was to make the remedy provided by the amendment exclusive." M. C. Kiser Co. v. Cent. of Ga. R. Co., 236 Fed. 573, 576; Affirmed, 239 Fed. 718, — C. C. A. —, see 249 U. S. 565.

62. Macon Grocery Co. v. A. C. L. R. Co., 215 U. S. 501, 54 L. Ed. 300, 30 Sup. Ct. 184.

mined by the Supreme Court and no more important question is now pending before that great tribunal.

If a shipper may not enjoin an unjust advance pending a determination by the Commission of its reasonableness, his remedy is clearly inadequate for the injury he may suffer from the exaction of the unjust rate.

Congress has been urged to give the Commission power to suspend an advance. The Senate Committee on Interstate Commerce. Senate bill 423, report No. 933. February 8, 1909. reported against giving such power to the Commission. One of the arguments used in that report is as follows:

"It is claimed that the indefinite suspension of the rate until final hearing is to deprive the carrier, if the rate advanced is reasonable, of his right of property during the period of suspension, without having given it any opportunity to be heard prior to the act of suspension. Due process of law must precede, and should not follow, the suspension. To set aside the carriers' act in fixing the rate pending the investigation required by due process of law is to deprive the carrier, *pro tanto,* of its property right to charge a reasonable rate. The fact that the statute requires an investigation after the suspension of the rate does not avoid the constitutional inhibition, as that provision can only be satisfied when the investigation precedes any disturbance of property rights. The carrier is entitled to the investigation before it is restrained in the *exercise* of its property rights; the theory of the amendment suggested is that the shipper is entitled to an investigation before the carrier can *exercise* its property rights."

This argument would not apply to injunctions granted by courts because when such injunction is granted "the carrier *receives* an investigation before it is restrained in the exercise of its property rights." The shipper also has "an investigation before the carrier can exercise" the power to deprive him of the right to trade in such a way that the remedy is inadequate and the damage irreparable.

§ 306. **Same Subject—Effect of Amendment of 1910.**—As to all rates, rules and regulations which may be suspended by the Commission under section 15 of the act of 1910, it would seem that the remedy at law is adequate and that, therefore,

courts of equity would have no jurisdiction to enforce its extraordinary equitable remedies.

The power to suspend now existing in the Commission applies only to a new individual or joint rate, fare, or charge, or any new individual or joint regulation or practice affecting any rate, fare, or charge.

There may be rules, regulations and practices which do not affect any rate, fare, or charge, and as to such the question is the same as that presented prior to the amendment of 1910. Judge Mayer in New York, in an unreported case, enjoined a tariff which, changing the former practice, eliminated the right of a consignee to inspect shipments of eggs prior to giving a receipt therefor. This new tariff did not affect a "rate, fare or charge," and was not suspended by the Commission although the reasonableness of the tariff was subsequently passed upon by that tribunal.[63]

§ 307. **Same Subject—Venue.**—Suits seeking to enjoin a rate averred to be an "arbitrary and manifold exaction" brought in a Federal court are not dependent for jurisdiction solely upon the ground of diversity of citizenship and cannot be brought in a Federal district in which none of the defendants reside.[64]

§ 308. **Jurisdiction of Suits to Set Aside Orders of the Commission.**—The second paragraph of section 207 of the Judicial Code gave the Commerce Court jurisdiction over "Cases brought to enjoin, set aside, annul, or suspend in whole or in

63. New York Mercantile Ex. v. Baltimore & O. R. Co., 36 I. C. C. 156.

64. Macon Grocery Co. v. Atlantic C. L. R. Co., 215 U. S. 501, 54 L. Ed. 300, 30 Sup. Ct. 184; Act Aug. 13, 1888, 25 Stat. L. 433, chap. 866, U. S. Comp. Stat. 1901, 508, 4 Fed. Stat. Ann. 265. Prior to the decision of the Supreme Court in the Macon Grocery case other courts had held differently: United States v. Standard Oil Co., 152 Fed. 290; Van Patten v. Chicago, etc., Ry. Co., 74 Fed, Penn. Co., 54 Fed. 730, 19 L. R. A. 387, 5 I. C. R. 545, 22 U. S. App. 561; United States v. Mooney, 116 U. S. 104, 29 L. Ed. 550, 6 Sup. Ct. 304; Atkins v. Fiber Disintegrating Co., 18 Wall., 85 U. S. 272, 21 L. Ed. 841; Re Louisville Underwriters, 134 U. S. 488, 33 L. Ed. 991, 10 Sup. Ct. 587; Re Hohorst, 150 U. S. 653, 37 L. Ed. 1211, 14 Sup. Ct. 221; Westinghouse Air Brake Co. v. Great N. Ry. Co., 88 Fed. 258, 31 C. C. A. 525; Kalispell Lumber

part any order of the Interstate Commerce Commission." By the Act of Congress of October 22, 1913, this power was "transferred to and vested in the several District Courts of the United States."[65]

§ 308 A. **Same Subject—Negative Order of the Commission.**—In discussing the jurisdiction of the Commerce Court, stated in the next preceding section, the issue was stated by the Chief Justice to be: "Is the authority of the Commerce Court confined to enforcing or restraining, as the case may require, affirmative orders of the Commission, or has it the power to exert its own judgment by originally interpreting the administrative features of the act to regulate commerce, and upon that assumption treat a refusal of the Commission to grant relief as an affirmative order and accordingly pass on its correctness?"

The question, after quoting the language of the jurisdictional paragraph, was answered by the Supreme Court as follows:[66] "Giving to these words their natural significance, we think it follows that they confer jurisdiction only to entertain complaints as to affirmative orders of the Commission; that is, they give the court the right to take cognizance, when properly made, of complaints concerning the legality of orders rendered by the Commission, and confer power to relieve parties in whole or in part from the duty of obedience to orders which are found to be illegal. No resort to exposition can add to the cogency with which the conclusion stated is compelled by the plain meaning of the words themselves."

This rule was recognized in the Intermountain case,[67] but was held inapplicable as the order there involved, refusing

Co. v. Great N. Ry. Co., 157 Fed. 845; Northern Pac. Ry. Co. v. Pacific Coast Lumber Manufacturers' Assn., 16 Fed. 1, 91 C. C. A. 39.

65. Section 461, *post*. See Jurisdiction of Commerce Court, section 460, *post*.

66. Procter & Gamble v. United States, 225 U. S. 282, 56 L. Ed. 1091, 32 Sup. Ct. 761.

67. United States v. Atchison T. & S. F. R. Co., 234 U. S. 476, 58 L. Ed. 1408, 34 Sup. Ct. 986. An order seemingly similar to the order in the Intermountain case was in Lehigh Valley R. Co. v. United States, 243 U. S. 412, 61 L. Ed. 819, 37 Sup. Ct. 397 held

special permission to charge more for the shorter than the longer haul under section 4 of the Act to Regulate Commerce then in force, was decided not to be a negative order. The Supreme Court is here stating a rule applicable under clause 8 of section 24 conferring jurisdiction on the Commerce Court which jurisdiction was subsequently transferred to the District Courts. Paragraph one of the same section confers general jurisdiction, on District Courts as follows:

"Of all suits of a civil nature at common law or in equity * * * when the matter in controversy exceeds, exclusive of interest and cost, the sum or value of Three Thousand Dollars, and (a) arises under the constitution or laws of the United States." A shipper, whose legal rights have been denied him by a refusal by the Commission to issue an order required under "the laws of the United States" should have an opportunity to appeal to the courts of the country. That he may have such right in a proper case has not definitely been denied by the Supreme Court, although in a case holding the order of the Commission to be a negative one that court said:[68] "We assume that the question whether the facts found by the Commission present a case of real or possible competition within the meaning of the statute is a question if law that could not be conclusively answered by the Commission; but still there is nothing for a court of equity to enjoin if all the Commission has done is to decline to extend the time during which the railroad can keep its boat line without risk. The order of the Commission was negative in substance as well as in form."

The law referred to in the quotation above became operative unless the Commission ordered otherwise. The failure of the Commission to enter an order, whether because of a refusal to act or because of action contrary to the law, should be subject to judicial review. A shipper should not have his rights finally denied without an appeal to the law

to be a negative order and, therefore, beyond the competency of a United States Court of equity.

68. Lehigh Valley case, next preceding note. For a general discussion of the subject see article by author hereof Columbia Law Review, January, 1917 and also in American Legal News, Vol. 28, No. 1 pages 5 *et seq.*

of the land as enforced by regular judicial process. The shipper's rights have been accurately stated as follows:[69] "And so we are of the opinion that the right of a shipper to have his property carried at a reasonable rate in the transaction of his business is a right of property, that to enforce such right our system of jurisprudence does not leave him remediless, and that where an action at law is inadequate a remedy in equity must and does exist."

In a case where the Interstate Commerce Commission refused to act because erroneously of the opinion that it was without jurisdiction;[70] and in a case where relief was denied because of its failure properly to understand and apply the statute of limitations, the Supreme Court held that a District Court of the United States sitting in the District of Columbia had jurisdiction to issue the writ of mandamus compelling the Commission to obey the applicable law.[71]

The rules established may be summarized as follows: Under the special jurisdiction granted the District Courts of the United States over proceedings arising under laws regulating commerce, the denial of relief by the Interstate Commerce Commission can not be reviewed by the courts which only act to set "aside, amend, or suspend" positive orders. Where the Commission refuses to act, courts may under their general powers compel action by the appropriate writ of mandamus.

In the Procter & Gamble case[72] hearing was had and relief denied by the Commission. In a suit to set aside that order, brought in the Commerce Court, a court of limited jurisdiction, it was alleged that the Commission had erred in law. The Supreme Court denied jurisdiction. This decision has support, if placed on the statute limiting the jurisdiction of the Commerce Court, but that basis was in effect denied by the Supreme Court in the Lehigh Valley Railroad case.[73] In the Cement Company case[74] a hearing was

69. Mclean Lumber Co. v. United States, 237 Fed. 460, 466.

70. Interstate Commerce Commission v. United States (Humbolt S. S. Co. case) 224 U. S. 474, 56 L. Ed. 849, 32 Sup. Ct. 556.

71. United States v. Interstate Com. Com., (Cement Case) 246 U. S. 638, 62 L. Ed. 914, 38 Sup. Ct. 408.

72. Note 66, *supra*.

73. Notes 67, 68, *supra*.

74. Note 71, *supra*.

had and because the Commission erred in applying the statute of limitations, jurisdiction in the courts was sustained. The distinction between the Procter & Gamble and the Lehigh Valley cases and the Cement case is rather shadowy. It is believed that the United States District Courts, the statutory amount being involved, has jurisdiction to review and set aside for specific error of law any decision of the Interstate Commerce Commission, whether there is an order dismissing the complaint or an order directing the action of the defendant. A finding either granting or denying relief "without evidence is arbitary and baseless" and the Constitution of the United States was framed to prevent "all arbitrary exercise of power."[75]

Suits within the general jurisdiction of Federal courts shall not when they arise "under the Constitution or laws of the United States" be brought "in any other district than that whereof he (the defendant) is an inhabitant."[76] As defendants are usually numerous and reside in several districts this venue provision is a serious obstacle to obtaining relief. There should be a venue prescribed for suits arising under the general jurisdictional clause similar to that prescribed for suits under the special grant of jurisdiction.[77]

308B. **Parties.**—Interested shippers not parties to the proceedings before the Commission may not sue to set aside an order of the Commission granting or refusing relief under the long-and-short haul clause of section 4 of the Act to Regulate Commerce as amended by the Act of June 1910 or that of 1920. Their remedy is by complaint to the Commission, as authorized by section 13 of those acts.[78] The United States has consented to be sued and is a necessary and proper party to suits to set aside orders of the Interstate Commerce Commission.[79] In the Steamship and the Cement

75. Int. Com. Com. v. Louisville & N. R. Co., 227 U. S. 88, 96, 57 L. Ed. 431, 33 Sup. Ct. 185, Sec. 315, *post.*

76. Judicial Code, Secs. 24, 51. Macon Grocery Co. v. Atlantic C. L. R. Co., 215 U. S. 501, 54 L. Ed. 300, 30 Sup. Ct. 184.

77. Section 324, *post.*

78. United States v. Merchants & Miners Traffic Asso., 242 U. S. 178, 188, 61 L. Ed. 233, 37 Sup. Ct. 24.

79. Judicial Code, Secs. 208, 211. Illinois C. R. Co. v. Public Utilities Co., 245 U. S. 493, 62 L. Ed.

cases, section 308 A, ante, the United States, on the relation of the interested parties, sued the Interstate Commerce Commission.

The Judicial Code, section 208 and 211, provides that the United States shall be sued in the limited number of cases in which jurisdiction was conferred on the Commerce Court. In these cases, as has been shown in the next preceding section, it has been held that the complainant before the Interstate Commerce Commission can not sue to set aside or annul a negative order. If the views expressed in that section are correct there is a general jurisdiction, where the amount involved is sufficient, to sue to set aside an order dismissing a complaint wherein any of the reasons shown in section 309, post, exist for setting the order aside. In such suits the Interstate Commerce Commission would seem to be a necessary party defendant and the carriers party to the complaint before the Commission proper parties.[80]

§ 309. **Ground upon Which Orders of the Commission May Be Set Aside.**—Orders of the Interstate Commerce Commission other than awards of damage made within the jurisdiction conferred on that tribunal are binding upon the carriers and companies subject thereto and, since the Amendment of 1906 a failure to obey such, subjects those corporations and persons included within the provisions of the Acts to Regulate Commerce to penalties.

Under the old law the Commission had no power to fix rates or prescribe practices for the future guidance of carriers subject to its jurisdiction. What orders it could make under that law had to be enforced by suits in the circuit and district courts, and on the hearings of such suits all reports of the Commission upon which such suits were brough were made "*prima facie* evidence of the matters therein stated." Under that law the Commission's report was not a "rule of action" but a finding of facts. The Hepburn Amendment

425, 38 Sup. Ct. 170. For parties where awards of reparation have been made see section 318, *post*.

80. Illinois C. R. Co. v. Int. Com. Com., 206 U. S. 441, 51 L. Ed. 1128, 27 Sup. Ct. 700. Southern Ry. Co. v. Tift, 206 U. S. 428, 51 L. Ed. 1124, 27 Sup. Ct. 709.

gave the Commission power to make rates, to legislate for the future; it did not take away its administrative power to make findings of fact in certain cases.

If the order is deemed to be unlawful, suit to determine that question must be filed in the proper district court of the United States. The grounds upon which the courts may set aside such orders as determined by the courts may be grouped into these: (1) That the order violates some provision of the Constitution of the United States; (2) That in making the order the Commission has relied on some mistake of law; (3) That the order is not included within the powers conferred by the statute upon the Commission; (4) That the order is, although in form correct, in substance so unreasonable as to violate the law: (5) That the legal effect of undisputed testimony has been disregarded by the Commission; (6) That a full hearing was not had before the order was entered.

These different reasons overlap and to some extent are statements of the same ground of illegality expressed in somewhat different phraseology, but the classification is deducible from the decisions and its use tends to make clear the principles which have been applied by the court.[81]

81. Int. Com. Com. v. Illinois Cent. R. Co., 215 U. S. 452, 54 L. Ed. 280, 30 Sup. Ct. 155; reversing the Circuit Court in Chicago & A. R. Co. v. Int. Com. Com. and Illinois Cent. R. Co. v. Int. Com. Com., 173 Fed. 930; and sustaining the order of the Commission in Traer v. Chicago & A. R. Co., 13 I. C. C. R. 451. Mr. Justice Lamar stated these grounds somewhat differently, but in substance the same, in Int. Com. Com. v. Union Pac. R. Co., 222 U. S. 541, 56 L. Ed. 308, 32 Sup. Ct. 108. Florida East Coast R. Co. v. U. S., 234 U. S. 167, 58 L. Ed. 1267, 34 Sup. Ct. Rep. 867; Int. Com. Com. v. Louisville & N. R. Co., 227 U. S. 88, 57 L. Ed. 431, 33 Sup. Ct. Rep. 185; Louisville & N. R. Co. v. U. S., 238 U. S. 1, 59 L. Ed. 1177, 35 Sup. Ct. 696. Penn. R. Co. v. International Coal Co., 230 U. S. 184, 57 L. Ed. 1446, 33 Sup. Ct. 893; Ann. Cas. 1915 A 315; Int Com. Com. v. Delaware, etc. R. Co., 220 U. S. 235, 251, 55 L. Ed. 448, 31 Sup. Ct. 292; Florida E. C. Ry. Co. v. United States, 234 U. S. 167, 58 L. Ed. 1267, 34 Sup. Ct. 867; Chestnut Ridge Railway Co. v. United States, 248 Fed. 791. In Manufacturer's R. Co. v. United States, 246 U. S. 457, 481, 482, 62 L. Ed. 831, 844, 38 Sup. Ct. 383 the Supreme Court stating the principle somewhat less specifically than in the text said:

The construction of a tariff or classification,[82] and the legal principles applicable to admitted facts, are not administrative but are legal propositions, which courts may decide, and questions which can "not be conclusively answered by the Commission."[83]

Notice given by the Commission that a case has been assigned for hearing is not such an order as a court may enjoin.[84] Shippers may sue to set aside orders of the Commission with rights similar to those carriers have.[85]

When a court has decided that the Commission had jurisdiction over the matter in controversy, the rule is to "do so without prejudice to the Commission's" right to rehear the case and make further orders.[86]

§ 310. **Same Subject. Violations of the Constitution-Fourth Amendment.**—The Fourth Amendment of the Constitution

"Whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the Commission (Interstate Commerce Commission v. Alabama Midland R. Co., 168 U. S. 144, 170, 42 L. Ed. 414, 424, 18 Sup. Ct. Rep. 45), and upon which its decision, made the basis of administrative orders operating *in futuro*, are not to be disturbed by the courts except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or, for some other reason, amount to an abuse of power. This results from the provisions of sections 15 and 16 of the Commerce Act as amended in 1906 and 1910 (34 Stat. at L. 589-591, chap. 3591; 36 Stat. at L. 551-554, chap. 309, Com. Stat. 1916, sections 8583, 8584), expounded in familiar decisions. Interstate Commerce Commission v. Illinois C. R. Co., 215 U. S. 452, 469, 470, 54 L. Ed. 280, 287, 288, 30 Sup. Ct. Rep. 155; Interstate Commerce Commission v. Union P. R. Co., 222 U. S. 541, 547, 56 L. Ed. 308, 311, 32 Sup .Ct. Rep. 108; Procter & Gamble Co. v. United States, 225 U. S. 282, 297, 298, 56 L. Ed. 1091, 1096, 1097, 32 Sup. Ct. Rep. 761; Interstate Commerce Commission v. Louisville & N. R. Co., 227 U. S. 88, 91, 57 L. Ed. 431, 433, 33 Sup. Ct. Rep. 185."

82. United States v. Penn. R. Co., 242 U. S. 208, 61 L. Ed. 251, 37 Sup. Ct. 95.

83. Lehigh V. R. Co. v. United States, 243 U. S. 412, 414, 61 L. Ed. 819, 820, 37 Sup. Ct. 434.

84. United States v. Ill. C. R. Co., 244 U. S. 82, 61 L. Ed. 1007, 37 Sup. Ct. 584.

85. McLean Lumber Co. v. United States, 237 Fed. 460.

86. Louisville & N. R. Co. v. United States, 242 U. S. 60, 74, 61 L. Ed. 152, 156, 37 Sup. Ct. 61.

of the United States guarantees the security of persons, houses, paper and effects against "unreasonable searches and seizures." Should an order of the Commission violate this provision, such order would be void.

The provision has been urged in suits to annul orders of the Commission.[87] An order of the Commission requiring an officer of a carrier to make report under oath showing what employees had rendered service in excess of the hours prescribed in the hours of service law, was held not to violate this provision.[88] When, however, and order requires an unreasonable search and seizure it is void.[89]

§ 311. **For a Violation of the Fifth Amendment.**—The Fifth Amendment provides that " no person shall * * * be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation."

The decisions of the Supreme Court relating to rates fixed by state authority, the exercise of which authority was alleged to violate the Fourteenth Amendment by fixing a confiscatory rate, are valuable in determining the same question arising under the Fifth Amendment which limits the powers of the Federal government as the fourteenth limits

87. Goodrich Transit Co. v. Int. Com. Com., 190 Fed. 943, Opinions Com. Ct. Nos. 21 to 24, p. 95. While the Commerce Court did not place its decision on the ground of the Fourth Amendment, it set aside the order of the Commission on other grounds, and was reversed by the Supreme Court, Int. Com. Com. v. Goodrich Transit Co., 224 U. S. 194, 56 L. Ed. 729, 30 Sup. Ct. 436. Holding that the Commission had no jurisdiction to require answer to the questions asked, see United States v. L. & N. R. Co., 236 U. S. 318, 59 L. Ed. 598, 35 Sup. Ct. 363; Ellis v. Int. Com. Com., 237 U. S. 434, 59 L. Ed. 1036, 35 Sup. Ct. 645.

88. Baltimore & O. R. Co. v. Int. Com. Com., 221 U. S. 612, 55 L. Ed. 878, 31 Sup. Ct. 621.

89. Harriman v. Int. Com. Com., 211 U. S. 407, 419, 420, 53 L. Ed. 253, 29 Sup. Ct. 115. See also Weeks v. United States, 232 U. S. 383, 58 L. Ed. 652, 34 Sup. Ct. 341; Int. Com. Com. v. Brimson, 154 U. S. 447, 38 L. Ed. 1047, 14 Sup. Ct. 1125; Int. Com. Com. v. Baird, 194 U. S. 25, 48 L. Ed. 860, 867, 24 Sup. Ct. 563; United States v. Skinner, 218 Fed. 870; and see also cases cited note 55, *supra*.

the power of the state governments."[90] In an opinion of the Supreme Court, Mr. Chief Justice White said: "Beyond controversy is determining whether an order of the Commission shall be suspended or set aside we must consider all relevant questions of constitutional power."[91]

A corporation is not entitled to the constitutional exemption from producing records nor can an officer thereof refuse to produce the corporate record "An officer of a corporation is protected by the self incrimination provision of the Fifth Amendment against the compulsory production of his private books and papers, but this privilege does not extend to books of the corporation in his possession."[92]

The Commerce Court said: "The carrier can not complain of a violation of its constitutional rights, if not to favor some person or class, but for the general welfare, it is compelled to make a rate for some particular service which, though in excess of the out of pocket expense, would nevertheless not be confiscatory if it were applied to all its freight, that is, the carrier has no constitutional right to a rate for each distinct kind of service which will equal its proportionate share of the entire operating expenses."[93]

90. See *ante*, Secs. 47, 48, 49, and notes thereto.

91. Int. Com. Com. v. Illinois C. R. Co., 215 U. S. 452, 54 L. Ed. 280, 30 Sup. Ct. 155; Constitutional question argued but Commission sustained as no violation shown. Int. Com. Com. v. Union Pac. R. Co., 222 U. S. 541, 56 L. Ed. 308, 32 Sup. Ct. 108.

92. Wilson v. United States, 221 U. S. 361, 55 L. Ed. 771, 31 Sup. Ct. 1538; cited and applied in Baltimore & O. R. Co. v. Int. Com. Com., 221 U. S. 612, 55 L. Ed. 878, 31 Sup. Ct. 621.

93. Lemon Rates Case, Atchison, T. & S. Ry. Co. v. United States, 203 Fed. 56, Opinion Com. Ct. No. 61, p. 537, citing, Minneapolis & St. L. R. Co. v. Minnesota, 186 U. S. 257, 46 L. Ed. 1151, 22 Sup. Ct. 900; St. Louis & S. F. R. Co. v. Gill, 156 U. S. 649, 39 L. Ed. 567, 15 Sup. Ct. 184, Atlantic C. L. R. Co. v. North Carolina Corp. Com., 206 U. S. 1, 51 L. Ed. 933, 27 Sup. Ct. 585, 11 Ann. Cas. 398. In the final Lemon Rate Case, Atchison, T. & S. F. Ry. Co. v. Int. Com. Com., 190 Fed. 591, Opinion Com. Ct. No. 7, p. 83, the order of the Commission was set aside because as stated by the Court the Commission gave force to the tariff law. The Commission, on a supplementary proceeding, disclaimed such an intention and entered an order fixing rates as in the original order, and this second order was sus-

If the foregoing language means that it is legal and proper to classify commodities so that those of unequal value may yield varying rates of return on the property investment, the court was correct. But it violates the constitutional rights of a carrier to require it to transport property at a rate which yields no substantial amount above the actual operating expense of the haul."[94]

§ 312. **For Mistake of Law.**—While the law in force prior to the enactment of the Hepburn Amendment made the order of the Commission only *prima facie* lawful, even under that law force was given the findings of the Commission upon disputed questions of fact. The present law gives the courts no jurisdiction over questions involving the credibility of witnesses or the weight of evidence.

In the Yellow Pine case[95] the Supreme Court referred to former cases and in summing up the decisions therein discussed said: "In all these cases, therefore, there was a single, distinct and dominant proposition of law which the Commission had rejected and the exact influence of which on its decisions could not be estimated," and even under the the then statute it was held that the orders of the Commission would not be disturbed because the Commission did not adopt certain presumptions of mixed law and fact put forward as factors in determining the reasonableness of a rate, and the court there stated as a suggestive applicable principle to the conclusions of the Commission that "such conclusions of fact were to be arrived at looking at the matter

tained by the Commerce Court. For Commission cases, see Arlington Heights Fruit Exchange v. Southern Pac. Co., 19 I. C. C. 148, and same styled case 22 I. C. C. 149.

94. Northern Pac. Co. v. North Dakota, 236 U. S. 585, 59 L. Ed. 735, 35 Sup. Ct. 429; Norfolk & W. Ry. Co. v. Conley, 236 U. S. 605, 59 L. Ed. 745, 35 Sup. Ct. 437.

95. Illinois C. R. Co. v. Int. Com. Com., 206 U. S. 441, 51 L. Ed. 1128, 27 Sup. Ct. 700; discussing Texas & Pac. Ry. Co. v. Int. Com. Com., 162 U. S. 197, 40 L. Ed. 940, 16 Sup. Ct. 666; Cincinnati, N. O. & T. P. Ry. Co. v. Int. Com. Com., 162 U. S. 184, 40 L. Ed. 935, 16 Sup. Ct. 700; Int. Com. Com. v. Alabama M. Ry. Co., 168 U. S. 144, 42 L. Ed. 414, 18 Sup. Ct. 45; Louisville & N. R. Co. v. Behlmer, 175 U. S. 648, 44 L. Ed. 309, 20 Sup. Ct. 209; East Tenn., Va. & Ga. Ry.

broadly and applying common sence to the facts that are proved," and, said the court: "This court has ascribed to them (the findings and conclusions of the Commission) the strength due to judgments of a tribunal appointed by law and informed by experience."

The Commission's orders were set aside, because it held that under the law a carrier was not entitled to a profit for a service in stopping hay for purposes of treatment or reconsignment;[96] because it struck down a reasonable terminal charge on the erroneous ground that, taken with a prior unreasonable charge, the total charge was too high,[97] because it required a switch connection when no one authorized by the statute filed application therefor;[98] because, as was held by the court, it determined the lawfulness of a rate from an application of the law of estoppel;[99] because it held that a payment of an elevator allowance was illegal;[100] because an allowance for terminal facilities was held illegal;[101] because there was no evidence.[102]

Other illustrations of mistakes of law by the Commission

Co. v. Int. Com. Com., 181 U. S. 127, 45 L. Ed. 719, 21 Sup. Ct. 516. See also Cincinnati, etc., R. Co. v. Int. Com. Com., 206 U. S. 142, 51 L. Ed. 995, 27 Sup. Ct. 648.

96. So. R. Co. v. St. Louis Hay & Grain Co., 214 U. S. 297, 53 L. Ed. 1004, 29 Sup. Ct. 678.

97. Int. Com. Com. v. Stickney, 215 U. S. 98, 54 L. Ed. 112, 30 Sup. Ct. 66.

98. Int. Com. Com. v. Delaware, L. & W. Ry. Co., 216 U. S. 531, 54 L. Ed. 605, 30 Sup. Ct. 415.

99. Southern Pac. Co. v. Int. Com. Com., 219 U. S. 433, 55 L. Ed. 283, 31 Sup. Ct. 288. See also Lemon Rate Case, Atchison, T. & S. F. Ry. Co. v. Int. Com. Com., 190 Fed. 591, Opinion Com. Ct. No. 20, p. 83, and 203 Fed. 56, Opinion Com. Ct. No. 61, p. 537.

100. Int. Com. Com. v. Diffenbaugh, 222 U. S. 42, 56 L. Td. 83, 32 Sup. Ct. 22. The Commission had put its finding on the *fact* that unjust discrimination existed, but evidence was undisputed and the conclusion from the admitted facts was one of law. Traffic Bureau Merchants Ex. of St. Louis v. Chicago, B. & Q. R. Co., 14 I. C. C. 317, 510, 551.

101. Sugar Literage Case, United States v. Baltimore & O. R. Co., 231 U. S. 274, 58 L. Ed. 218, 34 Sup. Ct. 75, affirming Baltimore & O. R. Co. v. United States, 200 Fed. 779; Opinion Com. Ct. No. 38, p. 499.

102. Florida E. C. R. Co. v. U. S., 234 U. S. 167, 58 L. Ed. 1267, 34 Sup. Ct. 867.

are misconstruction of a tariff,[103] applying a wrong rule of law to admitted facts,[104] and misapplying the statute of limitations.[105]

Where the question involved in a suit to set aside the order of the Commission is one of fact, the principle stated by the Supreme Court is, "The outlook of the Commission and its powers must be greater than the interest of the railroad, or of that which may affect those interests. It must be as comprehensive as the interest of the whole country. If the problems which are presented to it, therefore, are complex and difficult, the means of solving them are as great and adequate as can be provided."[106]

§ 313. **Lack of Jurisdiction.**—The powers of the Interstate Commerce Commission find their limitation as well as their grant in the statute, and should the Commission attempt to exercise any power not contained in the grant, its action would be void. The old law gave power to the Commission to establish through routes and joint rates applicable thereto when no reasonable through route existed. The non-existence of a reasonable through route was a necessary prerequisite to the exercise of the power to prescribe through routes, and whether or not this jurisdictional prerequisite existed was a question which the courts could determine, and when that question was found against the jurisdiction, the order of the Commission was set aside.[107] Under the present law the power of the Commission is broader and discretion is given

103. United States v. Penn. R. Co., 242 U. S. 208, 61 L. Ed. 267, 37 Sup. Ct. 95.

104. Lehigh V. R. R. Co. v. United States, 243 U. S. 412, 61 L. Ed. 820, 37 Sup. Ct. 434.

105. United States v. Int. Com. Com., 246 U. S. 638, 62 L. Ed. 914, 38 Sup. Ct. 408 and see *ante* section 309 and notes.

106. Int. Com. Com. v. Chicago, R. I. & P. R. Co., 218 U. S. 88, 54 L. Ed. 946, 30 Sup. Ct. 651. For a full discussion of the right of the Commission to exercise its judgment on questions of fact, see Illinois Cent. R. Co. v. Int. Com. Com., 206 U. S. 441, 51 L. Ed. 1128, 27 Sup. Ct. 700.

107. Int. Com. Com. v. Northern Pac. Ry. Co., 216 U. S. 538, 54 L. Ed. 608, 30 Sup. Ct. 417; and so where no jurisdiction existed over a street railroad, Omaha and C. B. Street Ry. Co. v. Int. Com. Com., 230 U. S. 324, 57 L. Ed. 1501, 33 Sup. Ct. 890.

to establish through routes "as the circumstances and conditions developed in each inquiry may seem to require."[108]

That the Commission has power to regulate transportation over the terminals at Galveston, when the transportation is within the Act to Regulate Commerce, has been determined.[109]

Orders held valid requiring the same rates on fuel coal as on commercial coal;[110] regulating the distribution of cars;[111] reducing rates;[112] regulating terminal charges;[113] carload rating for bulked shipments;[114] reports and accounting;[115] precooling charges.[116]

§ 314. **The Substance and Not the Form of the Finding Determines.**—Prescribing rates, rules and regulations for the future is a legislative act.[117] Congress has prescribed the general rules of action under which the Commission shall proceed, leaving to the Commission the application of those rules to particular situations and circumstances.[118]

108. Crane Iron Works v. United States, Opinion Com. Ct., No. 55, p. 453, 209 Fed. 238; Truckers Transfer Co. v. Charleston & W. C. Ry. Co., 27 I. C. C. 275, 277.

109. Southern Pac. Terminal Co. v. Int. Com. Com., 219 U. S. 498, 55 L. Ed. 310, 31 Sup. Ct. 279.

110. Int. Com. Com. v. Baltimore & O. R. Co., 225 U. S. 326, 56 L. Ed. 1107, 32 Sup. Ct. 742.

111. Int. Com. Com. v. Illinois C. R. Co., 215 U. S. 452, 54 L. Ed. 280, 30 Sup. Ct. 153; Int. Com. Com. v. Chicago & A. R. Co., 215 U. S. 479.

112. Int. Com. Com. v. Chicago, R. I. & P. R. Co, 218 U. S. 88, and Int. Com. Com. v. Union Pac. R. Co., 222 U. S. 541, 56 L. Ed. 308, 32 Sup. Ct. 108; Int. Com. Com. v. Louisville & N. R. Co., 227 U. S. 88, 57 L. Ed. 431, 33 Sup. Ct. 185.

113. Southern Pac. Terminal Co. v. Int. Com. Com., 219 U. S. 498, 55 L. Ed. 310, 31 Sup. Ct. 279.

114. Int. Com. Com. v. Delaware, L. & W. Ry. Co., 220 U. S. 235. 55 L. Ed. 448, 31 Sup. Ct. 392.

115. Int. Com. Com. v. Goodrich Transit Co., 224 U. S. 194, 56 L. Ed. 729, 32 Sup. Ct. 436; Kansas City So. Ry. Co. v. United States, 231 U. S. 423, 58 L. Ed. 296, 34 Sup. Ct. 125.

116. Atchison, T. & S. F. Ry. Co. v. United States, 232 U. S. 199, 58 L. Ed. 568, 34 Sup. Ct. 291.

117. Hooker v. Int. Com. Com., 188 Fed. 242, and cases cited at p. 252, Opinion Com. Ct. No. 5, p. 33; reversed by Sup. Ct. on the ground that when relief is denied a shipper by the Commission the courts have no jurisdiction. Hooker v. Knapp, 225 U. S. 302, 56 L. Ed. 1099, 32 Sup. Ct. 769. See also Baer Bros. Mer. Co. v. D. & L. G. R. Co., 233 U. S. 479, 58 L. Ed. 1055, 34 Sup. Ct. 641.

118. Int. Com. Com. v. Goodrich Transit Co., 224 U. S. 194,

That the power delegated to the Commission may be exercised within the form delegated does not deprive the courts of jurisdiction to review its orders if such orders be in substance a violation of the delegated authority, for "the substance and not the shadow determines the validity of the exercise of the power."[119]

In the language of a Circuit Judge, "The power is vested in and the duty is imposed upon the circuit courts (now the district courts) to relieve from orders * * * which, though in form within its (the Commission's) delegated power, evidence so unreasonable an exercise of it that they are in substance beyond it."[120]

§ 315. **Disregard of the Legal Effect of Undisputed Testimony.**—Where there are disputed questions of fact, as has been stated many times, the jurisdiction of the Commission to determine what is the truth is exclusive and its conclusions are not subject to review by the courts.[121] Carriers, however, under the law at present have the primary right to make rates. If, after hearing, such rates are shown to be unreasonable or otherwise unlawful, the Commission may set them aside and require the substitution of just and lawful rates. If there is no evidence of the unlawfulness of an existing rate, the Commission has no power to prescribe another and different rate. When there is no disputed question of fact, the legal effect of evidence is a question of law over which the courts have jurisdiction,[122] and a finding of the Commis-

210, 56 L. Ed. 729, 735, 32 Sup. Ct. 436; Kansas City So. Ry. Co. v. United States, 231 U. S. 423, 58 L. Ed. 296, 34 Sup. Ct. 125, 131; Louisville & N. R. Co. v. United States, 245 U. S. 463, 62 L. Ed. 400, 38 Sup. Ct. 141.

119. Int. Com. Com. v. Illinois C. R. Co., 215 U. S. 452, 54 L. Ed. 280, 30 Sup. Ct. 153, citing Postal Cable-Tel. Co. v. Adams 155 U. S. 688, 698, 39 L. Ed. 311, 15 Sup. Ct. 360, See also Southern Pac. Co. v. Int. Com. Com., 219 U. S. 433, 55 L. Ed. 283, 31 Sup. Ct. 288.

120. Peavy v. Union Pac. R. Co., 176 Fed. 409, 418; on appeal modified on other points: Int. Com. Com. v. Diffenbaugh, 222 U. S. 42, 56 L. Ed. 83, 32 Sup. Ct. 22.

121. Int. Com. Com. v. Delaware, L. & W. Ry. Co., 220 U. S. 235, 55 L. Ed. 448, 31 Sup. Ct. 392.

122. Int. Com. Com. v. Louisville & N. R. Co., 227 U. S. 88, 57 L. Ed. 431, 33 Sup. Ct. 185.

sion without evidence or contrary to the legal effect of undisputed evidence is void.[123] In discussing the general question Mr. Justice Lamar, delivering the opinion of the Supreme Court said: "The reasonableness of rates cannot be proved by categorical answers," and after stating facts considered by the Commission, he continued, "with that sort of evidence before them, rate experts of acknowledged ability and fairness, and each independently of the other, may not have reached identically the same conclusion. We do not know whether the results would have been approximately the same. For there is no possibility of solving the question as though it were a mathematical problem to which there could only be one correct answer. Still there was in this mass of facts that, out of which experts could have named a rate. The law makes the Commission's findings on such facts conclusive." [124]

In the Precooling case,[125] Mr. Justice Lamar, after stating the power of the Commission, said: "All these matters are committed to the decision of the administrative body, which in each instance is required to fix reasonable rates, and establish reasonable practices. The courts have not been vested with any such power. They cannot make rates. They cannot interfere with rates fixed or practices established by the Commission unless it is made plainly to appear that those ordered are void."

The Supreme Court in applying the rule announced by Mr. Justice Lamar emphasized the principle in this language: "A tribunal such as the Interstate Commerce Commission, expert in matters of rate regulation, may be presumed to draw inferences that are not obvious to others.[126]

123. Atchison, T. & S. Ry. Co. v. Int. Com. Com. and the United States, 188 Fed. 229, Opinion Com. Ct. No. 2, p. 3.

124. Int. Com. Com. v. Union Pac. R. Co., 222 U. S. 541, 549, 56 L. Ed. 308, 32 Sup. Ct. 108.

125. Atchison, T. & S. Ry. Co. v. United States, 232 U. S. 199, 58 L. Ed. 568, 34 Sup. Ct. 291, affirming same styled case, 204 Fed. 647, Opinion Com. Ct. No. 41, p. 627, and citing Int. Com. Com. v. Union Pac. R. Co., 222 U. S. 547 56 L. Ed. 311, 32 Sup. Ct. 108.

126. O'Keefe v. United States, 240 U. S. 290, 60 L. Ed. 651, 36 Sup. Ct. 313. Nashville Grain Exchange v. United States, 234 Fed. 699, 702.

§ 316. **Lack of Full Hearing.**—The language of the statute requires a full hearing. It was contended on behalf of the Commission that if after a hearing the Commission was of the opinion that a particular rate was unreasonable, its order based on such opinion was conclusive. Answering this contention, Mr. Justice Lamar, delivering the opinion of the Supreme Court said:

"But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. And if the Government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our Government. It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another; is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.

"In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, quasi-judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence * * *, or if the facts do not as a matter of law support the order made.'"[127]

127. Int. Com. Com. v. Louisville & N. R. Co., 227 U. S. 88, 57 L. Ed. 431, 33 Sup. Ct. 185, citing Int. Com. Com. v. Union Pac. R. Co., 222 U. S. 541, 56 L. Ed. 311, 32 Sup. Ct. 108; Tang Tun v. Edsell, 223 U. S. 673, 681, 56 L. Ed. 606, 32 Sup. Ct. 359; Chin Yoh v. U. S., 208 U. S. 8, 13, 52 L. Ed. 369, 28 Sup. Ct. 201; Low Wah Suey v. Backus, 225 U. S. 460, 468, 56 L. Ed. 1165, 32 Sup. Ct. 734; Zakonite v. Wolf, 226 U. S. 272, 56 L. Ed. 218, 33 Sup. Ct. 31; United States v. B. & O. S. W. R. R., 226 U. S. 14, 57 L. Ed. 104, 33 Sup. Ct. 5, 9; Atlantic C. L. R. Co. v. North Carolina Corp. Com., 206 U. S. 1, 20, 51 L. Ed. 933, 27 Sup. Ct. 585; Wisconsin, M. & P. R. Co. v. Jacobson, 179 U. S. 287, 301, 45 L. Ed. 194, 21 Sup. Ct. 115.

§ 317. **Awards of Damages.**—Section 8 of the act gives the person injured the right to recover "the full amount of damages sustained," and the Commission having made an award of damages, section 16 provides:

"If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carriers runs, or *in any state court of general jurisdiction* having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit in the circuit court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated. * * * If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit."

Orders making an award of damages must be lawful, and such orders are not binding if the Commission has violated the Constitution, exceeded its jurisdiction or acted without evidence or contrary to the undisputed evidence.[128] The circuit court of appeals held that an order of the Commission awarding damages which failed to prescribe a rate for the future was void.[129] This decision was reversed by the Supreme Court which held that the questions could be considered separately or together, for, said the court, "Award-

128. Western New York & P. R. Co. v. Penn Refining Co., 137 Fed. 343, 70 C. C. A. 23, affirmed, Penn Refining Co. v. Western N. Y. & P. Ry. Co., 208 U. S. 208, 52 L. Ed. 456, 28 Sup. Ct. 268. Wrong basis used, Penn R. Co. v. Jacoby, 242 U. S. 89, 61 L. Ed. 165, 37 Sup. Ct. 49; Clark Bros. Coal Mining Co. v. Penn. R. Co., 238 Fed. 642, Atchison T. & S. F. Ry. Co., v. Spiller, 246 Fed. 1, 23, 158 C. C. A. 227, 249 U. S. 677, 63 L. Ed. —, 39 Sup. Ct. —. But the courts are not technical in looking into the procedure befor the Commission, Missouri P. Ry. Co. v. Ferguson Saw Mill Co., 235 Fed. 474, 149 C. C. A. 20.

129. Denver & R. G. R. Co. v. Baer Bros. Mer. Co., 187 Fed. 485, 109 C. C. A. 337.

ing reparation for the past and fixing rates for the future involve the determination of matters essentially different. One is in its nature private and the other public. One is made by the Commission in its quasi-judicial capacity to measure past injuries sustained by a private shipper; the other in its quasi-legislative capacity, to prevent future injury to the public."[130]

The award is not a judgment but is *prima facie* evidence of the facts therein stated, and the finding that a rate exacted is unreasonable and that the plaintiff has suffered damage, does not preclude the defendant from showing in court facts constituting a defense.[131] Interest may be allowed by the Commission in fixing the amount of an award, and the courts in suits thereon may allow attorneys fees for services before the courts.[132]

130. Baer Bros. Mercantile Co. v. Denver & R. G. R. Co., 233 U. S. 479, 58 L. Ed. 1055, 34 Sup. Ct. 641, citing Tex. & Pac. Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 51 L. Ed. 553, 27 Sup. Ct. 350; Robinson v. Baltimore & O. R. Co., 222 U. S. 506, 56 L. Ed. 288, 32 Sup. Ct. 114.

131. Meeker v. Lehigh Valley R. Co., 236 U. S. 412, 59 L. Ed. 644, 35 Sup. Ct. 328; reversing Circuit Court of Appeals, Lehigh Valley R. Co. v. Meeker, 211 Fed. 785; Meeker v. Lehigh Valley R. Co., 236 U. S. 434, 59 L. Ed. 659, 35 Sup. Ct. 328; Mills v. Lehigh Valley R. Co., 238 U. S. 473, 59 L. Ed. 1414, 35 Sup. Ct. 888, reversing Circuit Court of Appeals in Lehigh Valley R. Co. v. Clark, 207 Fed. 717, 125 C. C. A. 235. See related questions in Penn R. Co. v. International Coal Co., 230 U. S. 184, 57 L. Ed. 1446, 33 Sup. Ct. 893; Penn. R. Co. v. Clark Bros. Coal Mining Co., 238 U. S. 456, 59 L. Ed. 1406, 35 Sup. Ct. 896; Penn. R. Co. v. Clark Bros. Coal Mining Co., 241 Pa. 515, 88 Atl. 754.

132. Cases Note 95, *supra*, and Denver & R. G. R. Co. v. Baer Bros. Mer. Co., 209 Fed. 577, 126 C. C. A. 399. The history of this case is interesting. Baer Bros. Mercantile Co. brought suit in the United States Court, but upon the decision of the Supreme Court in Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 51 L. Ed. 553, 27 Sup. Ct. 350, the suit was voluntarily dismissed. Complaint was then filed with the Commission, Baer Bros. Mercantile Co. v. M. Pac. Ry. Co., 13 I. C. C. 329, upon which an order awarding damages was entered. Upon this order the District Court entered a judgment and allowed attorney's fees. This decision and decree were reversed by the Circuit Court of Appeals, Denver & R. G. R. Co. v. Baer Bros. Mercantile Co., 187 Fed. 485, 109 C. C. A. 337. The Court of Appeals was reversed and the District Court affirmed

The Commission having once acted, declaring a particular rate unlawful, it was held unnecessary for an injured shipper again to present the same question to the Commission before electing to sue directly in a Federal court to recover his damages.[133]

The reasonableness of a rate is not involved in a suit on an award of damages made by the Commission and based upon a charge in excess of a rate legally filed with the Commission, and on such an award attorneys fees may be allowed by the court.[134]

It would seem, therefore, that when the Commission follows the authority given in the statute, the power of attorney under which it acts, the effect given its findings should be those stated in Cincinnati, H. & D. R. Co. v. Int. Com. Com., where the Supreme Court says:[135]

"The statute gives *prima facie* effect to the findings of the Commission, and, when those findings are concurred in by the circuit court, we think they should not be interfered with unless the record established that clear and unmistakable error has been committed."

§ 318. **Awards of Damages—Parties and Procedure.**—In suits on orders of the Commission awarding damages, all parties in whose favor the Commission may have made an award by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint de-

by the Supreme Court: Baer Bros. Mer. Co. v. Denver & R. G. R. Co., note 94, *supra*, and see Baer Bros. Mer. Co. v. Mo. Pac. Ry. Co., 17 I. C. C. 225. The petition to set aside this order was dismissed, a preliminary injuction having been denied, Denver & R. G. R. Co. v. Int. Com. Com., 195 Fed. 968, Opinion Com. Ct. No. 35, p. 401.

133. National Pole Co. v. Chicago & M. O. Ry. Co., 211 Fed. 65, See also Note 131, *supra*.

134. Chicago B. & Q. R. Co. v. Feintuck, 191 Fed. 482, 112 C. C. A. 126.

135. Cincinnati, H. & D. R. Co. v. Int. Com. Com., 206 U. S. 142, 51 L. Ed. 995, 27 Sup. Ct. 648.

fendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.[136]

While proceedings of the Commission "should not be too narrowly constrained by technical rules" there should be substantial proof supporting the conclusion and in the language of the Supreme Court,[137] "a finding which * * * would disclose (1) the relation of the parties as shipper and carrier in interstate commerce; (2) the character and amount of the traffic out of which the claims arose (3) the rates paid by the shipper for the service rendered and whether they were according to the established tariff; (4) whether and in what way unjust discrimination was practiced against the shipper * * * (5) whether, if there was unjust discrimination, the shipper was injured thereby, and, if so, the amount of his damages; (6) whether the rate collected from the shipper * * * was excessive and unreasonable, and, if so, what would have been a reasonable rate for the service; and, (7) whether, if the rate was excessive and unreasonable, the shipper was injured thereby, and, if so, the amount of his damages."

Suits for damages for unlawful rates, fares, charges and practices during Federal control must be brought against an agent of the United States.[138]

§ 319. **Procedure to Enforce or Annul Orders of the Commission.**—The jurisdiction conferred on the Commerce Court stated in section 298 above was transferred to the district courts by the Act of October 22, 1913,[139] and that Act further

136. Sec. 16 of Act; Sec. 407, *post*.

137. Meeker & Co. v. Lehigh V. R. Co., 236 U. S. 412, 59 L. Ed. 644, 35 Sup. Ct. 228, Ann. Cas. 1916 B 691. See also Mills v. Lehigh V. R. Co., 238 U. S. 477, 59 L. Ed. 1414, 35 Sup. Ct. 888 and Atchison T. & S. F. Ry. Co. v. Spiller, 246 Fed. 1 and cases cited at pp. 16, 17.

138. Commerce Act 1887, as amended by Transportation Act 1920, Sec. 206, *post*. Appendix one.

139. Sec. 460, 461, 463, *post*.

provides that the procedure in the district courts in respect to cases of which jurisdiction is conferred upon them by this Act shall be the same as that heretofore prevailing in the Commerce Court. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States.

Cases pending in the Commerce Court at the date that court was abolished were by the statute transferred to the proper district courts, and authority was given to the Judges of the Commerce Court to make orders necessary to effectuate such transfer. And after that date, cases remanded by the Supreme Court which had been appealed from the Commerce Court were to be remanded to a district court, designated by the Supreme Court, wherein it might have been instituted at the time it was instituted in the Commerce Court.

§ 320. **Interlocutory Injunctions—Three Judges to Hear Application for.**—The District Court Jurisdiction Act provides:

"No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges."

This provision is similar to section 17 of the Act June 18, 1910, which section had reference to injunctions against state laws and, as amended, against orders made by administrative state officers,[140] and the decisions on that statute are of value in considering this provision.

140. Judicial Code, Sec. 266, amended by act March 4, 1913, 37 Stat. 1013; Louisville & N. R. Co. v. U. S., 238 U. S. 1, 59 L. Ed. 1177, 35 Sup. Ct. 696.

Where only one judge acts on an application for an interlocutory injunction his order is a nullity. As said by the Supreme Court, "the hearing and determination of the request for a temporary injunction should have been had before a court consisting of three judges constituted in the mode specified by the statute, * * * A tribunal not so constituted did not possess jurisdiction."[141]

Three judges are convened to determine the propriety of issuing or denying an injunction and not to pass on the merits of the case.[142]

§ 321. **Interlocutory Injunctions—Notice and Hearing.**—No application for an interlocutory injunction enjoining, in whole or in part, any order of the Interstate Commerce Commission shall "be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, and to such other persons as may be defendants in the suit; provided that in cases where irreparable damages would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judge may, at the time of hearing such application, upon a like finding, continue the temporary

141. Ex parte Metropolitan Water Co., 220 U. S. 539, 55 L. Ed. 576, 31 Sup. Ct. 600; and see Louisville & N. R. Co. v. Garret, 231 U. S. 298, 58 L. Ed. 229, 34 Sup. Ct. 48; Louisville & N. R. Co. v. Railroad Com. of Ala., 208 Fed. 35; where an order of a State Railroad Commission was involved but no interlocutory injunction asked, three judges were not necessary, Seaboard Air Line Ry. Co. v. Railroad Com. of Ga., 213 Fed. 27.

142. Brown Drug Co. v. United States, 235 Fed. 603.

stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for."[143]

The language relating to a statement of facts as to irreparable damages to be made by the court granting an injunction is the same as that in the Commerce Court Act. Construing the language in that Act the Supreme Court held that there were three things provided for, (1) a temporary restraining order, (2) an injunction *pendente lite*, and (3) a perpetual injunction, and that "the statement of facts as to irreparable damages relate only to the first class of cases," and it was ruled that the granting of an injunction *pendente lite* rested in the sound discretion of the trial court.[144]

The reënactment of the statute in the District Court Jurisdiction Act adopts this prior construction whether it be fully supported by the language of the statute or not.

§ 322. **Interlocutory Injunctions—Appeal from.**—An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made.

This provision for appeal applies to interlocutory injunctions and not to a temporary stay or suspension.[145]

When an appeal is taken the trial court may maintain the *status quo* pending the appeal.[146] Temporary injunctions against state officers are not such orders as may be appealed directly to the Supreme Court.[147]

143. Judicial Code, Sec. 208.

144. United States v. Baltimore & O. R. Co., 225 U. S. 306, 56 L. Ed. 1100, 32 Sup. Ct. 817. See same case, United States v. Baltimore & O. R. Co., 231 U. S. 274, 58 L. Ed. 218, 34 Sup. Ct. 75, 76.

145. See construction by Supreme Court, Sec. next preceding.

146. Louisville & N. R. Co. v. United States, 227 Fed. 273. Reversed but not on this point. Same styled case, 242 U. S. 60, 61 L. Ed. 152, 37 Sup. Ct. 61.

147. Looney v. Eastern T. R Co., 247 U. S. 214, 62 L. Ed. 1084, 38 Sup. Ct. 460.

§ 323. **Appeal from Final Judgment.**—Upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission the same requirement as to the judges and the same procedure as to expedition and appeal shall apply. A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such case the notice required shall be served upon the defendants in the case and upon the Attorney General of the state.

Section two of the Act of June 18, 1910, relating to appeals from the Commerce Court gave the Commerce Court power to "direct the original record to be transmitted on appeal instead of a transcript thereof," and provided that an appeal should not stay or supersede the judgment appealed from unless so ordered by the Supreme Court or a justice thereof, and that appeals should have priority in hearing and determination. Neither of these provisions is contained in the repealing Act.

§ 324. **Venue of Suits.**—The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the Commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed as meaning final destination of such shipment.[148]

148. Secs. 462 to 469, *post*.

The venue here prescribed is not so broad as that stated in section 16 of the Act under which suit may be brought wherein is the residence of the party upon whose petition or for whose benefit the order was made, and also in the district "in which is located the principal operating office of the carrier, or through which the road of the carrier runs."[149a]

This venue is special and applies only to the cases named. Suits under the general jurisdiction of the District Courts must be brought in the district whereof the defendant is an inhabitant or when jurisdiction is founded only on diversity of citizenship in the district of the residence of either the plaintiff or the defendant.[150]

149. Sec. 407, *post*.

150. Illinois C. R. Co. v. Public Utilities Commission of Illinois, 245 U. S. 493, 62 L. Ed. 425, 38 Sup. Ct. 170. Judicial Code, Sections 24, 51, 207, 208. Section 308 A, *ante*.

## CHAPTER VIII.

## ACTS OF CONGRESS INDIRECTLY AFFECTING INTERSTATE TRANSPORTATION.


§ 325. Scope of Chapter.
326. Quarantine Laws Relating to Transportation.
327. Sherman Anti-Trust Law.
328. Clayton Anti-Trust Law.
329. Federal Trade Commission Law.
329a. Merchant Marine.
330. Safety Appliance Law.
331. Hours of Service Law.
332. Employers' Liability Law.
333. Arbitration And Labor Laws.
334. Breaking Seals of Railroad Cars Containing Interstate or Foreign Commerce.
334a. Transportation of Stolen Motor Vehicles Prohibited.
334b. Child Labor Law.


§ 325. **Scope of Chapter.**—The general purpose of this work is to state the law governing the transportation of freight and passengers. It is not a treatise on the general law of carriers, nor is it a discussion of the commerce clause of the Constitution of the United States. These questions are incidentally involved, but the main purpose of the work is to treat of the rights of shippers and carriers which arise out of, relate to, or are affected by the acts of Congress. Of these acts, the Act to Regulate Commerce, the amendments thereof and supplements thereto, including the Elkins law, are the most important. These acts are herein copied and annotated (see chapter nine).

The so-called anti-trust statutes being the Act of July 2, 1890 and known as the Sherman Act, and the Act of Oct. 15, 1914, known as the Clayton Act, do affect carriers, and the Clayton Act expressly confers jurisdiction on the Interstate Commerce Commission.

The 28-hour law directly affects the questions discussed in this book and that statute is discussed in chapter 10, *post*. A knowledge of the other statutes hereinafter referred to is sometimes necessary to a clear understanding of the ques-

tions affecting the rights and duties of carriers engaged in interstate transportation. Other statutes herein referred to and inserted in appendices more or less directly affect the questions which pertain to the regulation of interstate transportation of freight and passengers. For this reason, reference to these statutes will be made in this chapter.

§ 326. **Quarantine Laws Relating to Transportation.**—Health and quarantine laws generally have little relation to rail carriers, although by Sec. 3 of the act of 1890 it was made a misdemeanor for any common carrier to violate any quarantine laws of the United States.[1]

By the Act of March 3, 1905, railroad companies and carriers and masters of steam vessels or other vessels or boats are prohibited from receiving for transportation and from transporting in interstate commerce, cattle or other live stock except in conformity to the Act, and it is provided that the Secretary of Agriculture shall make and promulgate rules and regulations governing such transportation. Meat inspection is provided for by the Act of 1907, and the transportation in interstate commerce of "any carcasses or parts thereof, meat or other meat products which have not been inspected, examined and marked "Inspected and passed" in accordance with terms of (said) this act, and with the rules and regulations prescribed by the Secretary of Agriculture," is prohibited. In the agricultural appropriation Act of 1908, the Act of 1907 is extended to include "dairy products."[2] The Bureau of Animal Industry, a bureau of the Department of Agriculture, has charge of making, promulgating and enforcing regula-

1. Act March 27, 1890, ch. 51, 26 Stat. 31. See also for health and quarantine laws relating to vessels, 3 Fed. Stat. Ann. pp. 214, 228. See also Sec. 6 Act March 3, 1905, ch. 1496, 33 Stat. 1264, 10 Fed. Stat. Ann. 37, Comp. Stat. 1916 Vol. 8 Sections 9156 *et seq.*

2. Act March 3, 1905, ch. 1496, 33 Stat. 1264, 10 Fed. Stat. Ann. 37, Act March 4, 1907, ch. 2907, 34 Stat. 1260 Fed. Stat. Ann. *post.* Meat Inspection Act, Act March 1909, p. 46. See Sec. 484, May 23, 1908, ch. 192 Fed. Stat. Ann. Supp. 1909, p. 92. See also Acts May 29, 1884, 23 Stat. 31; March 3, 1891, March 2, 1895, 7 Fed. Stat. Ann. 448, February 2, 1903, 32 Stat. 791. Regulations made by the Secretary of Agriculture have the force of a Statute. States v. Peet, 80 Vt. 449, 68 Atl. 661.

tions under these statutes, and the Act of 1913[3] makes all the provisions of the Act of 1905 "apply to any railroad company or other common carrier whose road or line forms any part of a route over which cattle or other live stock are transported in the course of shipment from any quarantined state or territory or the District of Columbia, or from the quarantined portion of any" such state, territory or district.

Regulations have been issued under authority of these statutes which prescribe in detail the rules to which the carriers must conform. The acts of Congress relating to Federal quarantine are compiled with the regulations prescribed by the United States Department of Agriculture in Bureau of Animal Industry general orders.

§ 327. **Sherman Anti-Trust Law.**—The Sherman Anti-Trust Law is copied and annotated in chapter eleven hereof. The Act was at first construed as not applying to carriers. This question was definitely settled in Trans-Missouri Freight Asso. case.[4] In this case the court said:

"The language of the act includes every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations. So far as the very terms of the statute go, they apply to any contract of the nature described. A contract therefore that is in restraint of trade or commerce is by the strict language of the act prohibited even though

3. Act March 4, 1913, 37 Stat., pt. I, C. 831, Comp. Stat. 1916, Vol. 8 Sections 9128 *et seq.* The Supreme Court held that a carrier receiving the cattle from a connecting carrier at a point outside the quarantine district was not within the provision of the act of 1905. United States v. B. & O. S. W. Ry. Co., 222 U. S. 8, 56 L. Ed. 68, 32 Sup. Ct. 6, and this act of 1913 apparently was introduced to meet this decision. An ordinance prohibiting the shipment of uninspected milk in interstate commerce, was held valid. Adams v. City of Milwaukee, 228 U. S. 572, 57 L. Ed. 971, 33 Sup. Ct. 610. Same style case, 144 Wis. 371, 129 N. W. 518, 43 L. R. A. (N. S.) 1066. To same effect see Asbell v. Kansas, 209 U. S. 251, 52 L. Ed. 778, 28 Sup. Ct. 485 and Note 26 L. R. A. (N. S.) 279; United States v. Penn. R. Co., 235 Fed. 961; Hammond, Standish & Co. v. M. C. R. R. Co., 42 I. C. C. 102, 106.

4. United States v. Trans-Mis-

such contract is entered into between competing carriers by railroad and only for the purposes of thereby affecting traffic rates for the transportation of persons and property. * * * The point urged on the defendant's part is that the statute was not really intended to reach that kind of an agreement relating only to traffic rates entered into by competing common carriers by railroad; that it was intended to reach only those who were engaged in the manufacture or sale of articles of commerce, and who by means of trusts, combinations and conspiracies were engaged in affecting the supply or the price or the place of manufacture of such articles. The terms of the act do not bear out such construction. Railroad companies are instruments of commerce, and their business is commerce itself."

This ruling was followed in the joint traffic case.[5]

That a violation of this Act in increasing rates was a proper matter to be considered when complaint was brought against such rates, was determined in the Tift case.[6] The amendment of June 18, 1910[7] placing the burden on the carriers to show that rates increased after January 1, 1910, are just and reasonable applies the same burden which the Commission held resulted when rates were increased as an effect of an unlawful combination. However, interstate carriers could not by consolidation or combination create a dominating control and thereby unduly restrict or suppress competition in transportation.[8] In establishing through rates and joint rates, a common carrier may not with the intent and result of eliminating competition select one carrier and exclude others.[9] Where a carrier had established a wharf as a public terminal station for the delivery of coal, it could

souri Freight Asso., 166 U. S. 290, 41 L. Ed. 1007, 17 Sup. Ct. 540, 1 Fed. Anti-Trust Dec. 648.

5. United States v. Joint Traffic Asso., 171 U. S. 505, 43 L. Ed. 259, 19 Sup. Ct. 25, 1 Fed. Anti-Trust Dec. 869.

6. Tift v. Southern Ry. Co., 138 Fed. 753, 2 Fed. Anti-Trust Dec. 733; Tift v. S. Ry. Co., 10 I. C. C. 548.

7. See. 92, *ante*, *post*, 399.

8. United States v. Union P. R. Co., 226 U. S. 61, 57 L. Ed. 124, 33 Sup. Ct. 53, United States v. Reading Co., 226 U. S. 324, 57 L. Ed. 243, 33 Sup. Ct. 90.

9. United States v. Pacific & A. Ry. & Nav. Co., 228 U. S. 87, 57 L. Ed. 742, 33 Sup. Ct. 433.

not lawfully contract granting the exclusive right to a single tug to dock and undock vessels thereat.[10] While such a contract might not be illegal under the provisions of the Act to Regulate Commerce prohibiting undue discrimination, the anti-trust statutes and such provisions have as one common object the requirement that no undue or unjust preference shall be accorded. This rule was not applied to a contract by which a long distance telephone company made an agreement for the interchange of messages with a local company to the exclusion of all other like companies.[11]

Transportation Act 1920, *post* 352[g], relieves carriers from the operation of the anti-trust laws so far as to permit carriers to consolidate.

§ 328. **The Clayton Anti-Trust Law.**—The purpose of the anti-trust statute approved Oct. 15, 1914,[12] was to make more definite the provisions of the Sherman Act, and to provide more effective means for enforcing the former Act. Section 11 of the Clayton Act gives authority to the Interstate Commerce Commission to enforce the provisions of designated sections of the Act, and section 10 is a regulation of interstate carriers with reference to certain contracts therein specified. This Act and the Sherman Anti-Trust Act are contained in chapter 11 of this book.

§ 329. **Federal Trade Commission Law.**—The Act to create a Federal Trade Commission, approved September 26, 1914[13]

10. Baker-Whitley Coal Co. v. Baltimore & O. R. Co., 188 Fed. 405, 110 C. C. A. 234, reversing same styled case 176 Fed. 632, and citing and discussing cases, distinguishing Weems Steamboat Co. v. Peoples Co., 214 U. S. 345, 53 L. Ed. 1024, 29 Sup. Ct. 661, and Louisville & N. R. R. Co. v. West Coast Naval Stores Co., 198 U. S. 483, 49 L. Ed. 1135, 25 Sup. Ct. 745.

11. Pacific Telephone & Tel. Co. v. Anderson, 196 Fed. 699, citing and discussing State v. Cadwaller, 172 Ind. 619, 87 N. E. 644, 89 N. E. 319; Home Tel. Co. v. Sarcoxie Light & Tel. Co., 236 Mo. 114, 139 S. W. 108; Home Tel. Co. v. Peoples Tel. Co., 125 Tenn. 270, 141 S. W. 845; Home Tel. Co. v. Granby Tel. Co., 147 Mo. App. 216, 126 S. W. 773; Atchison T. & S. F. Ry. Co. v. Denver, etc., R. R. Co., 110 U. S. 667, 28 L. Ed. 291, 4 Sup. Ct. 185; St. Louis I. M. & S. Ry. Co. v. Southern Express Co., Express Cases, 117 U. S. 1, 29 L. Ed. 791, 6 Sup. Ct. 542, 628; Union Pac. Ry. Co. v. United States, 59 Fed. 813, 827, 8 C. C. A. 282, 296.

12. See Secs. 495, *et seq.*, *post*. Charleston & Norfolk Steamship Co. 47 I. C. C. 365, 368.

13. Appendix A. Provisions re-

gives the commission so created certain regulatory powers over corporations, firms and partnerships engaged in interstate commerce other than those subject to regulation by the Interstate Commerce Commission. The Act, Sec. 4, defines certain words, among which are:

"Commerce means commerce among the several states or with foreign nations, or in any territory of the United States, or in the District of Columbia, or between any such territory and another, or between any such Territory and any state or foreign nation, or between the District of Columbia and any state or territory or foreign nation.

"Acts to regulate commerce means the act entitled 'An Act to Regulate Commerce' approved February 14th, 1887, and all acts amendatory thereof and supplementary thereto."

Sec. 11 provides: "Nothing contained in this act shall be construed to prevent or interfere with the enforcement of the provisions of the anti-trust acts, or the acts to regulate commerce, nor shall anything contained in this act be construed to alter, modify or repeal the said anti-trust acts, or the acts to regulate commerce, or any part or parts thereof."

lating to the Bureau of Corporations and the Anti-Dumping Act are also included in this appendix. The words "unfair methods of competition" in section 5 of the Federal Trade Commission Act are indefinite; and the contention that they are too vague to authorize an administrative finding of their violation, is plausible, probably sound. Circuit Judge Baker finds an analogy between the words and other legislative terms. Sears Roebuck & Co. v. Federal Trade Commission, 258 Fed. 307. Circuit Judge Ward holds that "Section 5 is intended to provide a method of preventing practices unfair to the general public and very particularly such as if not prevented will grow so large as to lessen competition and create monopolies in violation of the Ant-Trust Acts." However, he said that "unfair methods" are "not restricted to such as violate the Anti-Trust Acts. Federal Trade Commission v. Gratz, 258 Fed. 314, 317. The Federal Trade Commission was established in the exercise of the constitutional power of Congress to regulate interstate and foreign commerce, and that Commission has no power to demand access to the books of a patentee for the purpose of obtaining information for the Navy Department. United States v. Basic Products Co., 260 Fed. 472. Citing and relying on United States v. Colgate & Co., 250 U. S. 300, 63 L. Ed. —, 39 Sup. Ct. —. Circuit Judge Ward with indicated

§ 329A. **Merchant Marine.**—The Shipping Act, Appendix O, *post*, contains regulatory provisions relating to water carriers, and is to an extent supplementary to the Interstate Commerce Act. Section 33 provided: "That this act shall not be construed to affect the power or jurisdiction of the Interstate Commerce Commission, nor to confer upon the board concurrent power or jurisdiction over any matter within the power or jurisdiction of such commission; nor shall this act be construed to apply to intrastate commerce."

§ 330. **Safety Appliance Law.**—Under the title Safety Appliance Acts may be included the Automatic Coupler Act (Appendix B), of March 2, 1893; as amended April 1, 1896; a supplement to the Automatic Coupler Act passed March 2, 1903, (Appendix C); the supplement to the Automatic Coupler Act approved April 14, 1910, and March 4, 1911, (Appendix D); the act requiring reports of accidents, approved May 6, 1910, (Appendix E); the Medals of Honor Act, approved Feb. 23, 1905, (Appendix F); the Hours of Service Act (Appendix G), approved March 4, 1907; the Ash Pan Act approved May 30, 1908, (Appendix H); the Explosive Acts, approved March 4, 1909, (Appendix I); the Boiler Inspection Act approved Feb. 17, 1911, (Appendix J).

These acts may not all be logically classed as safety appliance acts, yet they all relate to the safety of interstate transportation and may properly be considered together.

These acts rest upon the right of Congress to regulate commerce with foreign nations and among the several states. The primary object of all of these acts was to promote the public welfare by securing the safety of employees and travelers; the acts are, therefore, remedial and should be so construed as not to defeat the obvious intention of Congress.

By the Sundry Civil Appropriation Act of June 28, 1902, the Commission is given authority to employ "inspectors to execute and enforce the requirements of the Safety Appliance Acts."

§ 331. **Hours of Service Law.**—The Hours of Service Act limits the time for which railroads may require or permit

reluctance holds that it is lawful to refuse to sell and says. "The obvious purpose of the respondent is to prevent any competi-

employees subject to the Act to be or remain on duty, gives the Commission power "after full hearing in a particular case and for good cause shown to extend" the time within which the carriers included in the Act shall comply with the proviso of section 2, and provides for penalties for violations of the Act.[14]

The Commission has held that this Act applies to street car lines which are interstate carriers;[15] that it does not apply to employees deadheading on passenger trains not engaged in the performance of any service,[16] nor to a ferry owned by a railroad not used as a car ferry,[17] nor to a trainman occasionally using the telegraph or telephone to meet an emergency.[18] The Commission by conference rulings 88 and 287[19] has interpreted the Act. A separate penalty is incurred for each employee remaining on duty in violation of the Act, and the statute relates to employees on duty, although they may be inactive.[20]

§ 332. **Employers' Liability Law.**—The first Employers' Liability Act, that of June 11, 1906, chap. 3073, 34 Stat. L., 232, was declared by the Supreme Court of the United States to be unconstitutional, because, as construed, it applied not only to the employees of carriers engaged in interstate, but also to carriers while engaged in intrastate commerce. Whether the Act violated the 14th Amendment was not decided, but reference was made to decisions of the court holding valid state

tion as to the resale price, between purchasers of its products." Beach-Nut Packing Co. v. Federal Trade Commission, — Fed. —. See in this connection United States v. Schrader, 251 U. S. —, 64 L. Ed. —, 40 Sup. Ct. 1; Federal Trade Commission v. Anderson Gratz and Benjamin Gratz, 252 U. S. —, 64 L. Ed. —, 40 Sup. Ct. —.

14. Schweig v. Chicago, M. & St. P. Ry. Co., 205 Fed. 96. See for a full discussion of these acts Kent's Digest of Decisions under Safety Appliance Acts.

15. Conf. Rul. 56.

16. Conf. Rul. 74; South Covington R. Co. v. Covington, 235 U. S. 537, 59 L. Ed. 350, 35 Sup. Ct. 158.

17. Conf. Rul. 108.

18. Conf. Rul. 342; *Ante*, End Volume One.

19. See *post* end this chapter Conference Rulings. See also Adamson Eight Hour Law, Comp. Stat. 1916, sections 8680a to 8680d and Transportation Act 1920, Title III, both Appendix two. Adamson Law Valid, Wilson v. New, 243 U. S. 332, 61 L. Ed. 755, 37 Sup. Ct. 298.

20. Mo., Kan. & Tex. Ry. Co. v. U. S., 231 U. S. 112, 58 L. Ed. 144, 34 Sup. Ct. 26.

laws making a special regulation as to a carrier's liability to its employees.[21]

The present Act (Appendix K) was approved April 22, 1908,[22] and its validity has been sustained by the Supreme Court.[23] Differences of opinion having arisen as to the jurisdiction of the state courts, the Act was amended in 1910, by providing that state and Federal courts should have concurrent jurisdiction in suits brought under the Act and also providing for the survivorship of causes of action.[24]

§ 333. **Arbitration and Labor Laws.**—The Act of June 1, 1898,[25] known as the Arbitration Act, or the Erdman Act, had as its purpose the settlement of controversies between carriers and their employees. This statute is persuasive and does not attempt to be compulsory. Arbitrators under the Act are essentially common law arbitrators and rights of the parties thereto rest upon the contract of arbitration, which contract must be construed in accordance with the rules governing contracts. In an arbitration had in accordance with the terms of the Act, Judge Van Fleet speaks of the "very commendable object aimed at by the act" and says:[26] "The evident purpose of the law was to afford a ready, summary, and speedy method of amicably adjusting

21. Employers' Liability Cases, Howard v. Ill. Cent. R. Co., 207 U. S. 463, 52 L. Ed. 297, 28 Sup. Ct. 141; Missouri, P. R. Co. v. Mackey, 127 U. S. 205, 32 L. Ed. 107, 8 Sup. Ct. 1161; Minneapolis & St. L. R. Co. v. Herrick, 127 U. S. 210, 32 L. Ed. 109, 9 Sup. Ct. 1176; Chicago K. & W. R. Co. v. Pontius, 157 U. S. 209, 39 L. Ed., 675, 15 Sup. Ct. 585.

22. 35 Stat. 65, ch. 149, U. S. Comp. Stat. Supp. 1911, p. 1322; Fed. Stat. Ann. 1909 Supp., p. 584, 1912 Supp., p. 1735.

23. Mondou v. New York, N. H. & H. R. Co., (Second Employers' Liability Act), 223 U. S. 1, 56 L. Ed. 327, 32 Sup. Ct. 169, 38 L. R. A., N. S., 44; Philadelphia B. & W. R. Co. v. Schubert, 224 U. S. 603, 56 L. Ed. 911, 32 Sup. Ct. 589.

24. Act Apr. 5, 1910, C. 143, 36 Stat. 391. U. S. Comp. Stat. 1916, Vol. 8 Section 8657 *et seq.* Fed. Stat. Ann. 1912, Supp. p. 335. See proviso to Sec. 28 Judicial Code. Barnett v. Spokane P. & S. Ry. Co., 210 Fed. 94.

25. Arbitration Act, also called Erdman Act, approved June 1, 1898, chap. 370, 30 Stat. L. 524, *et seq.*, 4 Fed. Stat. Ann. 784, U. S. Comp. Stat. 1901, p. 3205.

26. Re Southern Pacific Co., 155 Fed. 1001.

labor disputes arising between the class of employers and employees to which it applies."

By act of March 4, 1911, 36 Stat. 1397, Fed. Stat. Ann. Supp. 1912, p. 260, it is provided: "The President of the United States from and after the passage of this act is authorized to designate from time to time any member of the Interstate Commerce Commission to exercise the powers conferred and the duties imposed upon the chairman of the Interstate Commerce Commission by the provisions of the Act concerning carriers engaged in interstate commerce and their employees,' approved June first, eighteen hundred and ninety-eight; and the member so designated during the period for which he designated, shall have the powers now conferred by said act on the chairman of the Interstate Commerce Commission."

The Erdman Act was repealed by the more comprehensive act of July 15, 1913.[27]

The labor provisions of Transportation Act 1920, *post* Appendix two, control now in determining wage questions arising between the parties named in that Act.

§ 334. **Breaking Seals of Railroad Cars Containing Interstate or Foreign Shipments.**—By act of Feb. 13, 1913, it was made a crime unlawfully to break the seal of any railroad car containing interstate or foreign shipments of freight or express, or to enter such car with intent to commit larceny therein, or to steal, unlawfully take, carry away or conceal goods or chattels moving as interstate freight, or to buy or receive such when unlawfully taken by another.[28]

§ 334A. **Transportation of Stolen Motor Vehicles Prohibited.**—The National Motor Vehicle Theft Act, *post*, (Appendix

27. Act July 15, 1913, 38 Stat. 103, chap. 6, Fed. Stat. Ann. 1914 Supp. p. 244; Appendix L. Superseding Act Note 25, *supra*.

28. Act Feb. 13, 1913, 37 Stat. 670, chap. 50, Fed. Stat. Ann. 1914 Supp. 203, Comp. Stat. 1916, Vol. 8, Sections 8603, 8604. Appendix M. See also Train Robbery Act, July 1, 1902. 62 Stat. 727; chap. 1376; Fed. Stat. Ann., Vol. 6, p. 758. A conviction under this statute sustained. Morris v. United States, 229 Fed. 516, 143 C. C. A. 584. The Act is constitutional. Friedman v. United States, 233 Fed. 429. Applies to transportation by express. Kambeitz v. United States, 262 Fed. 378,—C. C. A. —.

N), prohibits the transportation in interstate or foreign commerce of a motor vehicle knowing the same to have been stolen.

§ 334B. **Child Labor Law.**—The Congress by Act September 1, 1916[29] sought to prohibit the transportation in interstate commerce of certain goods mined or manufactured where children were employed. The statute was held unconstitu- sought to prevent the employment of children through the tional by the Supreme Court,[30] and the Congress has now taxing power.[31]

29. Act Sept. 1916, Chapter 432. Comp. Stat. 1916, sections 8819a to 8819e.

30. Hammer v. Dagenhart, 247 U. S. 251, 62 L. Ed. 1101, 38 Sup. Ct. 529, Ann. Cas. 1918E 724. See article by the present writer, Case and Comment April 1917, page 906.

31. Act Feby. 24, 1919, C. 18, sections 1200 to 1207, Comp. Stat. Supp. 1919 Vol. 1, pages 1376 to 1378. The question of the validity of this statute is now pending in the courts.

## CHAPTER IX.

### ACTS REGULATING COMMERCE.

Including act approved February 4, 1887, chapter 104, effective April 5, 1887, 24 Stat. L. 379, U. S. Comp. Stat. 1901, p. 3154, 3 Fed. Stat. Ann. 809, et. seq. Known as the Cullom Act.

Amendment of March 2, 1889, 25 Stat. L. 855, Chap. 382, U. S. Comp. Stat. 1901, p. 3158, 3 Fed. Stat. Ann. 852, et. seq.

Amendment of February 10, 1891, Chapter 128, 26 Stat. L. 753, U. S. Comp. Stat. 1901, p. 3163, 3 Fed. Stat. Ann. 839.

Amendment of February 8, 1895, Chap. 61, 28 Stat. L. 643, U. S. Comp. Stat. 1901, p. 3171, 3 Fed. Stat. Ann. 851.

Act February 11, 1893, 27 Stat. L. 443, Chap. 83, U. S. Comp. Stat. 1901, p. 3173, 3 Fed. Stat. Ann. 855. Known as the Testimony Act.

Act February 11, 1903, Chapter 544, 32 Stat. L. 823, U. S. Comp. Stat. Supp. 1907, 10 Fed. Stat. Ann. 199. Known as the Expediting Act.

Act February 19, 1903, Chap. 708, 32 Stat. L. 847, U. S. Comp. Stat. Supp. 1907, p. 880, 10 Fed. Stat. Ann. 170. Known as the Elkins Act.

Act February 25, 1903, Chap. 755, 32 Stat. L. 903, 10 Fed. Stat. Ann. 173, being section one of the Appropriation Act.

Act June 29, 1906, 34 Stat. L. 584, Chap. 3591, U. S. Comp. Stat. Supp. 1907, p. 892, Fed. Stat. Ann. Supp. 1907, p. 167. Known as the Hepburn Act.

Act June 30, 1906, Chap. 3920, 34 Stat. L. 798, U. S. Comp. Stat. Supp. 1907, p. 900, Fed. Stat. Ann. Supp. 1907, p. 382.

Act April 13, 1908, 35 Stat. L. 60, Chap. 143.

Act of June 18, 1910, 36 Stat. L. 539, Chap. 309, U. S. Comp. Stat. Supp. 1911, p. 1288, Fed. Stat. Ann. Supp. 1912, pp. 111 to 127.

Act Aug. 24, 1912, 37 Stat. L. 566, Chap. 390, Fed. Stat. Ann. Supp. 1914, p. 378. Known as Panama Canal Act.

Act Mch. 1, 1913, 37 Stat. L. 701, Chap. 92, Fed. Stat. Ann. Supp. 1914, p. 204.

Act Mch. 4, 1913, 37 Stat. L. 1013, Chap. 160, Fed. Stat. Ann. Supp. p. 226.

Act Oct. 22, 1913. Known as District Court Act.

Government Aided Railroad and Telegraph Lines Act.

Lake Erie and Ohio Ship Canal Act.

Parcel Post Act.

Witness Acts.

Transportation Act 1920; Act February 28, 1920.

Bill of Lading Act; Act August 29, 1916, U. S. Comp. Stat. 1916, Secs. 8604aaa to 8604w.

334a. Titles of Acts and Definitions.

335. Scope of Act to Regulate Commerce.
336. Not Applicable to Intrastate Transportation.
336a. Certain Water Transportation Exempted.
337. Term "Common Carrier," "Railroad," and "Transportation" Defined.
338. Duty of Carrier to Furnish Transportation and to Establish Through Routes.
339. All Transportation Charges Must Be Reasonable.
340. Classification of Telegraph, Telephone and Cable Messages.
341. Classifications, Regulations and Practices Must be Reasonable.
342. Free Service with Certain Exceptions Prohibited and Penalties Prescribed.
342a. Excepting Cincinnati Southern Railway.
343. Railroad Companies Prohibited from Transporting Commodities in Which They Are Interested, with Certain Exceptions.
344. Terms under Which Switch Connections Shall Be Made.
344a. Car Service Defined.
344b. Duty of Carrier To Furnish Safe and Adequate Car Service.
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344d. Schedule of Car Service Must be Filed.
344e. Authority of Commission to Establish Car Service Rules.
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344g. Routing Regulations.
344h. Commission May Act by Agents—Penalties.
344i. Extension and Abandonment of Present Railroad Facilities.
344j. Procedure in Applying For Extension or Abandonments.
344k. Further Procedural Rules—Penalties.
344l. Commission May Require Extension of Facilities.
344m. Facilities Solely Within One State Exempted.
344n. Punishment For Obstructing Interstate or Foreign Commerce.
344o. Provisions Relating to Duties of Carriers During War.
345. Definition and Prohibition of Unjust Discrimination.
346. Undue and Unreasonable Preference Prohibited.
346a. Regulation of Collection of Transportation Charges.
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348. Rule as to Long and Short Hauls.
349. Relief From Long and Short Haul Clause.
350. Changes Not Required Until Further Orders.
351. Rates Reduced by Competition with Water Routes—Not Increased When.
352. Pooling of Freights and Division of Earnings Regulated.
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352b. Commission To Adopt A Plan.
352c. Notice of Plan To Be Given.
352d. Conditions Under Uhich Consolidations Must Be Made.
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352f. Express Companies Consolidation.
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354. Whether or Not Competition Exists to be Determined by the Commission.
355. Commission May Relieve from Provision.
356. Water Carriers to File Tariffs.
357. Violators of Sherman Anti-Trust Act Not to Use Panama Canal.
358. Carriers Shall File, Print and Keep Public Schedules of Rates.
359. Regulations as to Printing and Posting Schedules of Rates for Freight Moving Through Foreign Countries from and to Any Place in the United States.
360. No Change of Schedules of Rates Shall Be Made Without Notice.
361. Names of All Carriers Parties to Schedules Must Be Specified.
362. Carriers Shall File Contracts Relating to Traffic Arangements.
363. Commission May Prescribe Form of Schedules.
364. No Carrier Shall Participate in Interstate Commerce Unless the Charges Therefor are Published, and No Such Carrier Shall Deviate from the Published Schedules.
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366. The Commission May Reject Schedules.
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368. Penalty for Misstating or Failure to State Rate.
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370. Corporations Violating the Act to Regulate Commerce Guilty as Individuals and Punishment Prescribed.
371. Rebate. Punishment for Offering, Granting, Soliciting, or Accepting.
372. Act of Officer or Agent, When Binding.
373. Carrier Filing or Participating in Rate Bound Thereby.
374. Forfeiture for Rebating in Addition to Penalties. Limitation of Six Years Fixed.
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377. Through Routes and Joint Rates Between Rail and Water Carriers.
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380. Conditions under Which Through Routes and Joint Rates with Water Carriers May Be Operated to Be Prescribed by the Commission.
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389. Power and Duty of Commissioners.
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394. Reports of Commission on Investigations, How Made and Published.
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397. Division of Joint Rates May Be Prescribed by Commission.
398. Right to Suspend Proposed Increases in Rates.
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405o. Commission May Purchase Equipment.
405p. Commission May Make Rules of Procedure.
405q. Section Not to Deprive Shippers of Right to Reparation.
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408. Limitation on Actions for Damages.
409. All Parties Jointly Awarded Damages May Sue as Plaintiffs Against All Carriers Parties to the Award.
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411. Commission May Suspend or Modify Its Orders.
412. Punishment for Knowingly Disobeying an Order Issued under Section Fifteen.
413. Special Attorneys May Be Employed.
414. Courts May Enforce Obedience to Commission's Order, Mandatory or Otherwise.
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416. Rehearings May Be Granted by Commission.
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417b. Function of Commission May Be Performed by Divisions.
417c. Procedure of Division—Rehearing by Whole Commission.
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440aa. Liability of Carrier After Sale of Goods.
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440ee. Title and Rights Acquired by Transferee.
440ff. Rights of Transferee.
440gg. Compelling Indorsement of Order Bill.
440hh. Warranties Extend to Negotiation of Bill for Value.
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440jj. Warranties by Mortgagee.
440kk. Bona Fide Purchaser of Bill Wrongly Negotiated.
440ll. Negotiation of Order Bill by Mortgagor.
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441f. Exclusive and Plenary Jurisdiction Given Commission.
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441l. Annual Reports by Commission to Congress.
442. Circumstances under Which Reduced or Free Fares and Rates May Be Given.
443. Existing Remedies Not Abridged or Altered. Pending Litigation Not Affected.
444. Interchangeable Mileage Tickets, How Issued.
445. Discrimination May Be Prevented by Writ of Mandamus, Remedy Cumulative.
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446c. Change of Schedules To Be Filed.
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446f. Automatic Trains—Control Devices May Be Required.

446g. Title of Act.
447. Existing Laws as to Obtaining Testimony Applicable to Act.
448. Repealing Conflicting Laws Not to Affect Pending Suits.
449. Time of Taking Effect of Act.
450. Carriers Must Designate Agents in Washington.
451. Pending Cases Not Affected.
452. Commission to Investigate Questions Pertaining to Issuance of Stocks and Bonds.
453. Injunctions against Operation of State Statutes.
454. When Act Effective.
455. Parties Defendant Other than Carriers in Suit to Enforce Provisions of Act.
456. Equitable Proceedings May Be Instituted by the Commission to Restrain Discrimination or Departures from Published Rates.
457. Immunity and Compulsory Attendance of Witnesses, Production of Books and Papers.
458. Expediting Act Applicable to Suits Brought under Direction of Attorney-General.
459. Repealing Clause Not Affecting Pending Suits or Accrued Rights.
460. Commerce Court.
461. Commerce Court Abolished.
462. Venue of Suits on Orders of Interstate Commerce Commission.
463. Procedure in the District Courts.
464. Temporary Restraining Orders.
465. An Appeal to the Supreme Court from Interlocutory Orders.
466. Appeals from Final Judgments.
467. Pending Causes Transferred to District Courts.
468. Certain Cases Given Precedence and Hearing Expedited. Hearing Before Three Judges.
469. Direct Appeal to Supreme Court.
470. Government Aided Railroad and Telegraph Lines.
471. Connecting Telegraph Lines.
472. Duties Imposed on Interstate Commerce Commission.
473. Duty of the Attorney-General.
474. Penalties Provided.
475. Duty of Telegraph and Railroad Companies to File Contracts with and Make Reports to Interstate Commerce Commission.
476. Right of Congress to Alter or Annul Act.
477. Lake Erie and Ohio River Ship Canal.
478. Parcel Post.
479. Compulsory Attendance of Witnesses and Production of Papers Provided for.
480. Amendment to Compulsory Attendance Act.
480a. Policy of Congress to Encourage Water Transportation.
480b. Effective Date Section Ten Clayton Act Extended.
480c. Part of Act Unconstitutional Not Invalidate Other Parts.
480d. Federal Control.

§ 334A. **Title of Act and Definitions.**—The Transportation Act 1920 is divided into five titles. Title 1 is as follows:

DEFINITIONS.

Section 1. This Act may be cited as the "Transportation Act, 1920."

Section 2. When used in this Act—

The term "Interstate Commerce Act" means the act entitled "An Act to regulate commerce," approved February 4, 1887, as amended;

The term "Commerce Court Act" means the Act entitled "An Act to create a commerce court, and to amend an Act entitled 'An Act to regulate commerce,' approved February 4, 1887, as heretofore amended and for other purposes," approved June 18, 1910;

The term "Federal Control Act" means the Act entitled "An Act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes," approved March 21, 1918, as amended;

The term "Federal control" means the possession, use, control, and operation of railroads and systems of transportation. taken over or assumed by the President under section 1 of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June 30. 1917, and for other purposes," approved August 29, 1916, or under the Federal Control Act; and

The term "Commission" means the Interstate Commerce Commission.

Transportation Act 1920 was approved February 28, 1920. U. S. Stat., Title I.

Titles II and III appear *post*; II as part of appendix 1 and III as appendix II; Title IV amends the Interstate Commerce Act and is inserted in the appropriate sections of this chapter; title V is made Secs. 480A, 480B and 480C, *post*, this chapter.

§ 335. **Scope of Act to Regulate Commerce.**

(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

(c) Transmission of intelligence by wire or wireless;—from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States, through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation or transmission takes place within the United States.

(2) The provisions of this Act shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States.

Part Sec. 400 Transportation Act 1920, Sec. 1, Interstate Commerce Act, paragraphs 1 (a) (b) (c) and part of paragraph 2. The former section read:

That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory

of the United States or the District of Columbia, to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.

Paragraph one of section one of Act to Regulate Commerce, as amended by Act of June 18, 1910. The original Act read:

"That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country."

The act of June 18, 1910, amended the act of June 29th, 1906, by including "telegraph, telephone and cable companies whether wire or wireless."

Original act constitutional. Int. Com. Com. v. Brimson, 154 U. S. 447, 448. 38 L. Ed. 1047. 14 Sup. Ct. 1125.

A purely intrastate carrier not participating in a through movement is not within the Act because the ultimate destina-

tion of the traffic may be beyond the state. Mo. & Ill. Rd. Tie & Lumber Co. v. Cape, etc., R. Co., 1 I. C. C. 30, I. C. R. 607; New Jersey Fruit Exp. v. Central R. Co. of New Jersey, 2 I. C. C. 142, 2 I. C. R. 84. Express companies not within original Act, though railroads conducting an express business are. Re Express Companies, 1 I. C. C. R. 349, 1 I. C. R. 677; United States v. Morsman, 42 Fed. 448.

A state road owning no rolling stock but used as a means of interstate traffic within Act. Heck v. E. T. V. & G. R. Co., 1 I. C. C. 495, 1 I. C. R. 775. An interstate bridge subject to Act. Ky. & Ind. Bridge Co. v. L. & N. R. Co., 2 I. C. C. 162, 2 I. C. R. 102. Order not enforced. Same style case, 37 Fed. 567. Commerce between points in the state but passing through another state is interstate commerce. New Orleans Cotton Exchange v. Cincinnati, N. O. & T. P. R. Co., 2 I. C. C. 375, 2 I. C. R. 289; Milk Producers Asso. v. Delaware etc. R. Co., 7 I. C. C. 92, 162. Foreign carriers participating in traffic from points in the United States to adjacent countries subject. Re Investigation Acts Grand Trunk Railway of Canada, 3 I. C. C. 89, 2 I. C. R. 496. Independent water lines not subject. New Orleans Cotton Exchange v. Ill. Cent. R. Co., 3 I. C. C. 534, 562, 2 I. C. R. 777.

When a state carrier engages in interstate commerce it becomes subject to the Act. Mattingly v. Penn. Co., 3 I. C. C 592, 2 I. C. R. 806. State steamboat not within Act. Capehart & Smith v. L. & N. R. Co., 4 I. C. C. 265, 3 I. C. R. 278. "Common control, management or arrangement" defined. Boston Fruit & Produce Exchange v. New York and New England Co., 4 I. C. C. 664, 3 I. C. R. 493. See same case, 5 I. C. C. 1, 3 I. C. R. 604. See also Trammel Railroad Commission of Ga. v. Clyde Steamship Company, 5 I. C. C. 324, 4 I. C. R. 120. All roads, including purely state roads, participating in an interstate haul subject to Act. James and Mayer Buggy Company v. Cincinnati, N. O. & T. P. R. Co., 4 I. C. C. 744. 3 I. C. R. 682. Order not enforced in circuit but was enforced in Supreme Court. Int. Com. Com. v. Cincinnati, N. O. & T. P. R. Co., 56 Fed. 925, 162 U. S. 184, 40 L. Ed. 935, 16 Sup. Ct. 700. Same rule when all water carrier joins. R. R. Com. of Florida v. Savannah, Fla. & W. R. Co., 5 I. C. C. 13, 136, 3 I. C. R. 688, 750. Order not enforced. Savannah, F.

& W. R. Co. v. Florida Fruit Exchange, 167 U. S. 512, 42 L. Ed. 257, 17 Sup. Ct. 998. The charter of the Northern Pacific Railroad Company does not exempt it from control of Act. Raworth v. N. Pac. R. Co., 5 I. C. C. 234, 3 I. C. R. 857. Merchants Union of Spokane Falls v. N. Pac. R. Co., 5 I. C. C. 478, 4 I. C. R. 183. Order not enforced. Farmers' L. & T. Co. v. N. Pac. R. Co., 83 Fed. 249. Receivers of railroad companies subject to Act. Independent Refiners Asso. v. W. N. Y. & Penn. R. Co., 6 I. C. C. 378, 386. Order not enforced. W. N. Y. & P. R. Co. v. Penn. Refining Co., 137 Fed. 343, 70 C. C. A. 23. Affirmed, 208 U. S. 208, 52 L. Ed. 456, 28 Sup. Ct. 268. Electric Railway partly in Maryland an partly in District of Columbia subject to Act. Wilson v. Rock Creek Ry. Co., 7 I. C. C. 83. Does not apply to transportation by wagon. Cary v. Eureka Springs Ry. Co., 7 I. C. C. 286. Stock Yards Terminal Road at Chicago not a common carrier. Cattle Raisers Asso. of Texas v. Ft. Worth & D. C. Ry. Co., 7 I. C. C. 513, 555-a. Order not enforced. Int. Com. Com. v. C. B. & Q. R. Co., 98 Fed. 173, 103 Fed. 249, 43 C. C. A. 209, 186 U. S. 320, 46 L. Ed. 1182, 22 Sup. Ct. 824. Import and export traffic over rail carriers within jurisdiction. Ocean carriers not. Kemble v. Boston & A. R. Co., 8 I. C. C. 110, 119. The determining features of a through shipment is the contract. Matter of Alleged Unlawful Rates and Practices in Transportation of Cotton, 8 I. C. C. 121. Within Act when engaged with other carriers in through transportation. Alleged Violation of Act by St. L. & S. F. Ry. Co., 8 I. C. C. 290; Penn. Millers Asso. v. Philadelphia & R. Ry. Co., 8 I. C. C. 531, 549. Applies on a movement from Canada to United States, Cist. v. Mich. Cent. R. Co., 10 I. C. C. 217. Shipment from one to another local point even though there may be an intention thereafter to ship to another and an interstate point is entitled to the local rate. Hope Cotton Oil Co. v. Tex. & Pac. Ry. Co., 10 I. C. C. 696, 703. After a car has arrived at its destination a subsequently contracted for switching movement to another place in the same city and state is not within the Act. St. Louis Hay and Grain Company v. Chicago, B. & Q. R. Co., 11 I. C. C. 82. Refrigeration charges within Act. Re Charges for Transportation and Refrigera-

tion of Fruit, 11 I. C. C. 129. Stage line over which part of a through movement is had not within Act. Wylie v. N. Pac. Ry. Co., 11 I. C. C. 145. Baggage transfer not within Act. Re Exchange of Free Transportation, 12 I. C. C. 39. A ferry transport joining in a through route and joint rate is within Act. Enterprise Transportation Co. v. Penn. R. Co., 12 I. C. C. 326, 335, 336. While a shipment to a local point with intention thereafter to make a new contract for shipment to an interstate point is not within the Act, the carrier must not act as agent of the shipper in making the reconsignment. Morgan v. M. K. & T. Ry. Co., 12 I. C. C. 525. No distinction between electric and steam roads. Chicago & M. Electric R. Co. v. Ill. Cent. R. Co., 13 I. C. C. 20. No jurisdiction over shipments from ports of United States to a foreign country not adjacent to this country. Cosmopolitan Shipping Co. v. Hamburg Am. Packet Co., 13 I. C. C. 266, 272, 273, 274; Lykes S. S. Line v. Commercial Union, 13 I. C. C. 310. Interstate movement regarded as an entirety and all carriers participating therein are subject to the Act. Subject fully discussed and cases cited. Leonard v. Kansas City S. Ry. Co., 13 I. C. C. 573. A terminal company owned by the same interests as a railroad within Act. "Railroad" includes depots, yards and grounds. Eichenberg v. So. Pac. Co., 14 I. C. C. R. 250. Order not enjoined. So. Pac. T. Co. v. Int. Com. Com., 166 Fed. 134. Interstate carriers by water are subject to Act only in respect to traffic transported under a common control, management or arrangement with a rail carrier. With respect to other traffic such water carriers are exempt from the provisions of the Act. Re Jurisdiction Over Water Carriers, 15 I. C. C. 205. Switching not within Act. Chicago, M. & St. P. Ry. Co. v. Becker, 32 Fed. 849. Water carrier from one state to another not joining in a through bill of lading with rail carriers not subject to Act. Terms of section defined. Ex Parte Koehler, 30 Fed. 867. A bridge crossing a stream from one state to another which is leased to a railroad is not a common carrier. Ky. & Ind. Bridge Co. v. L. & N. R. Co., 37 Fed. 567. A shipment from one to another point in a state and which was immediately reshipped by the agent of consignor to a point within the state within section. Cutting v. Fla. Ry. & Nav. Co., 46 Fed. 641. A state road by joining

in a contract for through traffic becomes subject to the Act to Regulate Commerce. Augusta S. R. Co. v. Wrightsville & T. R. Co., 74 Fed. 522; United States v. Seaboard Ry. Co., 82 Fed. 563; Interstate Stock Yards Co. v. Indianapolis U. Ry. Co., 99 Fed. 472; Cassatt v. Mitchell Coal & Coke Co., 150 Fed. 32, 81 C. C. A. 80, 10 L. R. A. (N. S.) 99; Mitchell Coal & Coke Co. v. Cassatt, 207 U. S. 181, 187, 52 L. Ed. 160, 163, 28 Sup. Ct. 108, 110; U. S. v. New York, C. & H. R. R. Co., 153 Fed. 630. Affirmed, New York C. & H. R. R. Co., 212 U. S. 481, 500, 53 L. Ed. 613, 29 Sup. Ct. 304; United States v. Standard Oil Co., 155 Fed. 305. Reversed on another ground. Standard Oil Co. v. U. S., 164 Fed. 376, 90 C. C. A. 364. United States v. Union Stock Yards Co. of Omaha, 161 Fed. 919; United States v. Sioux City Stock Yards, 162 Fed. 556. If the state carrier received no freight on nor issues through bills of lading it is not subject. Int. Com. Com. v. Bellaire, Z. & C. Ry. Co., 77 Fed. 942; United States v. Chicago, K. & S. R. Co., 81 Fed. 783; United States v. Geddes, 131 Fed. 452, 65 C. C. A. 320; State of Iowa v. Chicago, M. & St. P. Ry. Co., 33 Fed. 391, 145 U. S. 632, 36 L. Ed. 857, 12 Sup. Ct. 978. Transportation from one point to another in the same state, though passing through another state, is not interstate commerce. United States v. Lehigh Valley R. Co., 115 Fed. 373; Lehigh Valley R. Co. v. Pennsylvania, 145 U. S. 192, 36 L. Ed. 672, 12 Sup. Ct. 806. *Contra*, United States v. Delaware, L. & W. R. Co., 152 Fed. 269, citing Hanley v. Kansas City, etc., R. Co., 187 U. S. 617, 47 L. Ed. 333, 23 Sup. Ct. 214; Lord v. Goodall N. & P. Steamship Co., 102 U. S. 541, 26 L. Ed. 224; Pacific Coast S. S. Co. v. Railroad Comrs., 9 Sawy. 253, 18 Fed. 10. Hanley v. R. R., supra, definitely settles the question that such transportation is interstate commerce. Private car companies furnishing their care indiscriminately to carriers subject to Act. Int. Com. Com. v. Reichmann, 145 Fed. 235.

The test of subjection to the Act is through routing in interstate commerce. United States v. Wood 145 Fed. 405, 411. All carriers engaged in transporting interstate freight by a continuous passage are within the regulation of interstate commerce by Congress. United States v. Colorado and N. W. R. Co., 157 Fed. 321, 85 C. C. A. 27; same style, 157 Fed.

342, 85 C. C. A. 48. Phillips, district judge, dissenting in an able opinion. Chicago, B. & Q. R. Co. v. United States, 157 Fed. 830, 85 C. C. A. 194.

A water carrier operating entirely within a state but engaged in transporting interstate commerce is subject to regulation by Congress. The steamer Daniel Ball, 10 Wall, 77 U. S. 557, 19 L. Ed. 999. Exportation begins when goods are committed to a common carrier for transportation beyond the state. Coe v. Errol, 116 U. S. 517, 29 L. Ed. 715, 6 Sup. Ct. 475. A local carrier transporting interstate commerce under through bills of lading is engaged in interstate commerce. Cincinnati, New Orleans & T. P. Ry. Co. v. Int. Com. Com., 162 U. S. 184, 40 L. Ed. 935, 16 Sup. Ct. 700. For Commission decision see James & Mayer Buggy Co. v. Cincinnati, N. O. & T. P. Ry. Co., 4 I. C. C. 744, 2 I. C. R. 625, 3 id. 682, Circuit Court, 56 Fed. 925, Circuit Court of Appeals, 64 Fed. 981, 13 U. S. App. 730. Int. Com. Com. v. Detroit, G. H. & M. Ry. Co., 167 U. S. 633, 42 L. Ed. 306, 17 Sup. Ct. 986. Affirming, 74 Fed. 803, 21 C. C. A. 103. Norfolk & W. R. Co. v. Penn., 136 U. S. 114, 34 L. Ed. 394, 10 Sup. Ct. 958; United States v. Wood, 145 Fed. 405; United States v. New York C. & H. R. Co., 153 Fed. 630, 632. Through transportation without through bills of lading make interstate commerce subject to the Act. United States v. Colorado and N. W. R. Co., 157 Fed. 321, and cases cited. Railroads that share in an agreed interstate rate subject to Act. L. & N. R. Co. v. Behlmer, 175 U. S. 648, 44 L. Ed. 309, 20 Sup. Ct. 209. See same case 6 I. C. C. 257, 4 I. C. R. 520, 71 Fed. 835, 83 Fed. 898, 28 C. C. A. 229, 42 U. S. App. 581. Mere intention to continue the transportation of an interstate shipment after it reaches its destination to another point in the same state as such destination will not make the last shipment interstate. Gulf, etc., R. Co. v. Texas, 204 U. S. 403, 51 L. Ed. 540, 27 Sup. Ct. 360. Express companies under the amendment of June 29, 1906, included. United States v. Wells Fargo Exp. Co., 161 Fed. 606. American Exp. Co. v. United States, 212 U. S. 522, 53 L. Ed. 635, 29 Sup. Ct. 315.

**Notes of Decisions Rendered Since 1909.**

"Wholly by the Railroad" discussed, Federal Sugar Refinery Company v. B. & O. R. Co., 17 I. C. C. 40, 46, 20 I. C. C. 200, Opin. of Com. Ct. Baltimore & O. R. Co. v. U. S., 200 Fed. 779, Opinion Com. Court No. 38, page 499; for a related case see American Sugar Ref. Co. v. Delaware, L. & W. Ry. Co., 200 Fed. 652. Same styled case, 207 Fed. 733, 125 C. C. A. 251. Commerce Court sustained. U. S. v. B. & O. R. Co., 231 U. S. 274, 58 L. Ed. 218, 34 Sup. Ct. 75, known as Sugar Lighterage Case.

The provisions of the Act of June 18, 1910 stated; Shoemaker v. C. & P. Telephone Co., 20 I. C. C. 614. Section quoted in its application to pipe line, Re Pipe Lines, 24 I. C. C. 1; order of Int. Com. Com. enjoined; Prairie Oil & Gas Co. v. United States, 204 Fed. 798, Com. Court Nos. 75 to 80, p. 545, Com. Court reversed in part; U. S. v. Ohio Oil Co., 234 U. S. 548, 58 L. Ed. 1394, 34 Sup. Ct. 956. State rates not to be used in interstate shipments. Kanotex Refinery Co. v. A. T. & S. F. R. Co., 34 I. C. C. 271. Applies to rate in Alaska. Int. Com. Com. v. U. S. ex rel. Humbolt S. S. Co., 224 U. S. 474, 56 L. Ed. 849, 32 Sup. Ct. 556; reversing the Int. Com. Com. in Re Jurisdiction in Alaska, 19 I. C. C. 81, and affirming U. S. ex rel. Humbolt S. S. Co. v. Int. Com. Com., 39 Wash. Law Rep. 386. Jurisdiction over Canadian Railroads discussed but not determined. Rates on High Explosives, 33 I. C. C. 567. May require carriers in United States to cease from concurring in joint rates with Canadian lines. International Paper Co. v. D. & H. Co., 33 I. C. C. 270. Jurisdiction over Cable Companies. White v. W. U. Tel. Co., 33 I. C. C. 500. Whether or not a shipment of freight is within the provision of the Act must be determined by "the essential character of the commerce, not its mere accidents." Tex. & N. O. R. Co. v. Sabine Tram Co., 227 U. S. 111, 129, 130, 57 L. Ed. 442, 449, 33 Sup. Ct. 229, 234. Citing, Coe v. Errol, 116 U. S. 517, 29 L. Ed. 715. 6 Sup. Ct. 475; So. Pac. Terminal Co. v. Int. Com. Com. 219 U. S. 498, 55 L. Ed. 310, 31 Sup. Ct. 279; Railroad Com. of Ohio v. Worthington, 225 U. S. 101, 56 L. Ed. 1004, 32 Sup. Ct. 653; State v. Southern Kan. Ry. Co., 49 S. W. 252;

State v. International & Gt. Nor. R. Co., 71 S. W. 994; Gulf, C. &. S. F. Ry. Co. v. Fort Grain Co., 72 S. W. 419; Same v. Same, S. W. 845, and distinguished Gulf C. & S. F. Ry. Co. v. Texas, 204 U. S. 403. 51 L. Ed. 540, 27 Sup. Ct. 360. But see Chicago M. & St. P. R. Co. v. Iowa, 233 U. S. 334, 58 L. Ed. 988, 34 Sup. Ct. 592.

**Notes of Decisions Rendered Since 1915.**

See conflict between state and interstate, Sec. 44, *ante*. Conflict of authority with Canada avoided, Aetna Powder Co. v. W. R. Co., 39 I. C. C. 199. That part of a through movement to or from Canada within the United States is subject to regulation. Fairmont Creamery Co. v. Adams Ex. Co., 43 I. C. C. 724. Transportation from wharf track to team track within the Act. United States v. Ill. C. R. Co., 230 Fed. 940. Intent as to shipment and not form of bill of lading controls. McFadden v. A. G. S. R. Co., 241 Fed. 562, 154 C. C. A. 338. While natural gas is excluded, piping natural gas to another state is interstate commerce. Landon v. Public U. Com. 234 Fed. 152, 245 Fed. 950; reversed, holding not interstate commerce, Public Util. Com. v. Landon, 249 U. S. 236. State and interstate rates, Am. Ex. Co. v. So. Dak., 244 U. S. 617, 61 L. Ed. 1352, 37 Sup. Ct. 656; Ill. C. R. Co. v. Public Utilities Ill., 245 U. S. 493, 62 L. Ed. 425, 38 Sup. Ct. 170; Producers Trans. Co. v. Railroad Com., 251 U. S. —, 64 L. Ed. —, 40 Sup. Ct. —. During Federal control, states could not regulate state rates. Dakota Cent. Telephone Co. v. North Dakota, 250 U. S. 163, 63 L. Ed. 910, 39 Sup. Ct. 507, P. U. R. 1919, p. 717, 4 A. L. R. 1623, Northern Pac. R. Co. v. North Dakota, 250 U. S. 135, 63 L. Ed. 897, 39 Sup. Ct. 505, P. U. R. 1919 D. 705. Public Service Commission v. New England Tel. & Tel. Co., 232 Mass. 465, 122 N. E. 567, P. U. R. 1919D. 49, 4 A. L. R. 1662, 250 U. S. 195, 63, L. Ed. 934, 39 Sup. Ct. 511; Burleson v. Dempey, 250 U. S. 191, 63 L. Ed. 929, 39 Sup. Ct. 511; Southwestern Tel. Co. v. Houston, 256 Fed. 690.

§ 336. **Not Applicable to Intrastate Transportation.**—The provisions of this Act shall not apply:

(a) To the transportation of passengers or property, or to the receiving, delivering, storage or handling of property, wholly within one state and not shipped to or from a foreign country from or to any place in the United States as aforesaid;

(b) To the transportation of intelligence by wire or wireless wholly within one state and not transmitted to or from a foreign country from or to any place in the United States as aforesaid;

Subdivisions a and b of paragraph 2 of section one Interstate Commerce Act, Sec. 400, Transportation Act 1920. The former section read: Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one State and not transmitted to or from a foreign country from or to any State or Territory as aforesaid.

Proviso as amended by Act June 18, 1910.

The proviso to paragraph one, section one, as originally enacted, read:

Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state as aforesaid.

For annotations, see next preceding section.

**Notes of Decisions Rendered Since 1909.**

This proviso does not prevent granting relief under Sec. 3 of Act, although the discrimination is caused by a state made intrastate rate. Railroad Com. of La. v. St. L. S. W. Ry. Co. (Shreveport case), 23 I. C. C. 31; order sustained Texas & P. Ry. Co. v. United States, Houston E. & W. T. Ry. Co. v. Same, 205 Fed. 380, 391, Com. Ct. No. 68, p. 655; Com. Ct. affirmed, Houston E. & W. T. Ry. Co. v. U. S., 234 U. S. 342, 58 L. Ed. 1341, 34 Sup. Ct. 833. State Rates not the Measure of Interstate Rates. Corp. Com. of Okla. v. A. T.

& S. F. R. Co., 31 I. C. C. 532; Trier v. C. St. P. M. & O. R. Co., 30 I. C. C. 352. Rates on Beer, 31 I. C. C. 544. Rates on Live Poultry, 32 I. C. C. 380, but see Western Rate Advance case 1915, 35 I. C. C. 497. A terminal company part of a railroad and steamship system not excluded from the jurisdiction of the Commission by this proviso. So. Pacific Terminal Co. v. Int. Com. Com., 219 U. S. 498, 55 L. Ed. 310, 31 Sup. Ct. 279. Same styled case, 166 Fed. 134, sustaining the Commission in Eichenberg v. So. Pac. Co., 14 I. C. C. 250. See Texas & No. R. Co. v. Sabine Tram Co., *supra*. Sec. 335 together with cases cited and discussed in that case, and Chicago M. & St. P. R. Co. v. Iowa, also cited in Sec. 335.

§ 336A. **Certain Water Transportation Exempted.**—The provisions of this Act shall not apply to the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this Act except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

A new paragraph added by section 400 Transportation Act 1920; section 1, paragraph 2, subdivision C of Interstate Commerce Act. This provision merely says that the absorptions named do not constitute an "arrangement for a continuous carriage or shipment" and do not change the rule that substance and not form controls. See section 41, *ante*, and Tampa Fuel Co. v. A. C. L. R. Co., 43 I. C. C. 231, and cases cited.

§ 337. **Terms "Common Carrier," "Railroad," and "Transportation" Defined.**—The term "Common Carrier" as used in this Act shall include all pipe line companies; telegraph, telephone and cable companies operating by wire or wireless; express companies; sleeping car companies; and all persons, natural or artifical, engaged in such transportation or transmission as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this Act it shall be held

to mean "common carrier." The term "railroad" as used in this Act shall include all bridges, car floats, lighters, and ferriers used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards and ground, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this Act shall include locomotives, cars, and other vehicles, vessels and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. The term "transmission" as used in this Act shall include the transmission of intelligence through the application of electrical energy or other use of electricity, whether by means of wire, cable, radio apparatus, or other wire or wireless conductors or appliances, and all instrumentalities and facilities for and services in conection with the receipt, forwarding, and delivering of message, communications, or other intelligence so transmitted, hereinafter also collectively called messages.

Part of section 400 Transportation Act, section 1, paragraph 3, Interstate Commerce Act. The former section reads:

The term "common carrier" as used in this act shall include express companies and sleeping car companies. The term "railroad" as used in this act, shall include all bridges and ferries used or operated in connection with any railroads, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease, and shall also include all switches, spurs, tracks and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any said property; and the term "transportation" shall include cars

and other vehicles and all instrumentalities and facilities, of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all service in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

Paragraph two, section one, of Act as amended by Act of June 29, 1906. The paragraph of the orignial Act read:

"The term 'railroad' as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad whether owned or operated under a contract, agreement, or lease; and the term 'transportation' shall include all instrumentalities of shipment or carriage."

A privately owned stock car not a common carrier. Burton Stock Car Co. v. Chicago, B. & Q. R. Co., 1 I. C. C. 132, 1 I. C. R. 329, 353. Express companies not included in original Act. Re Express Companies, 1 I. C. C. 349, 369, 1 I. C. R. 677. Report of Commission 1887, 1 I. C. R. 650, 657, An interstate bridge a common carrier. Ky. & I. Bridge Co. v. L. & N. R. Co., 2 I. C. C. 162, 2 I. C. R. 102. *Contra* holding the bridge company not a common carrier. Ky. & I. Bridge Co. v. L. & N. R. Co., 37 Fed. 567. A stock yards terminal road not a common carrier. Cattle Raisers Asso. v. Ft. W. & D. Co. Ry. Co., 7 I. C. C. 513, 555-a. Order not enforced. Int. Com. Com. v. Chicago, B. & Q. R. Co., 98 Fed. 173, 103 Fed. 249, 43 C. C. A. 209, 186 U. S. 320, 46 L. Ed. 1182, 22 Sup. Ct. 824. Stage line not a common carrier within meaning of this Act. Wylie v. N. Pac. Ry. Co., 11 I. C. C. 145. Baggage company not within Act, and "common carrier" means a carrier subject to the Act. Re Right of R. R. Co's. to Exchange Free Transportation with Local Transfer Co's., 12 I. C. C. 39. A ferry transportation company entering into a through transportation arrangement is a common carrier. Enterprise Trans. Co. v. Penn. R. Co., 12 I. C. C. 326, 335. "Railroad" defined. Eichenberg v. So. Pac. Co., 14 I. C. C. 250. Common carrier defined. United States v. Sioux City Stock Yards Co., 162 Fed. 556.

**Notes of Decisions Rendered Since 1909.**

Applies to street railways. West End. Imp. Club v. O. & C. B. R. & B. Co., 17 I. C. C. 239. Jurisdiction Over Urban Electric Lines, 33 I. C. C. 536. Commission held to be without jurisdiction. O. & C. B. St. Ry. Co. v. Int. Com. Com., 179 Fed. 243. Commission sustained by Com. Ct. Omaha & C. B. St. Ry. Co. v. Int. Com. Com., 191 Fed. 40, Opin. Com. Ct. No. 25, p. 147; Com. Ct. & Com. reversed without passing on the effect of the amendment of June 18, 1910, passed subsequent to the action of the Commission. Omaha & C. B. St. Ry. v. Int. Com. Com., 230 U. S. 324, 57 L. Ed. 1501, 46 L. R. A. (N. S.) 385, 33 Sup. Ct. 890. Outbound shipment under a transit privilege is transportation. Brook-Rauch Mill & Elevator Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 651. Bridge Company under the facts stated not subject to Act. Kansas City v. K. C. V. & T. Ry. Co., 24 I. C. C. 22. Elevation connected with transportation may be paid for by the carriers. Re Elevation Allowances, 24 I. C. C. 197. For history of decisions relating to elevation see Re Allowances to Elevators by Mo. Pac., 14 I. C. C. 315; Traffic Bureau, Merchants Exchange of St. Louis v. C. B. & C. R. R. Co., 14 I. C. C. 317, 22 I. C. C. 496; Peavy & Co. v. N. Pac., 176 Fed. 409; Int. Com. Com. v. Diffenbaugh, 222 U. S. 42, 56 L. Ed. 83, 32 Sup. Ct. 22. Union P. R. Co. v. Updike Grain Co., 222 U. S. 215, 56 L. Ed. 171, 32 Sup. Ct. 39, affirming Uudike Grain Co. v. N. P. R. Co., 178 Fed. 223, 101 C. C. A. 583. Meaning of Transportation as applied to Lining Cars. S. W. Mo. Millers' Club v. St. L. & S. F. R. Co., 26 I. C. C. A. 583. Meaning of Transportation as applied to Lining Winter, 26 I. C. C. 681. A sleeping car destined over interstate route is an instrumentality of interstate commerce while lying over at a junction. Pullman Co. v. Linke, 203 Fed. 1017. Icing Car Load Shipments within the Act. Cudahy Packing Co. v. G. W. Ry. Co., 215 Fed. 93. Delivery upon arrival. Horton v. Tonopah Goldfield R. Co., 225 Fed. 406.

Confiress has occupied the field as to express companies engaged in interstate commerce, thus excluding the power of state laws to affect Barrett v. New York, 232 U. S.

14, 58 L. Ed. 483, 34 Sup. Ct. 203. A jitney a common carrier. Nolen v. Riechman, 225 Fed. 812.

**Notes of Decisions Rendered Since 1915.**

"Car Ferry" embraced in definition of railroad. Peninsular & Occidental S. S. Co., 37 I. C. C. 432, 435; Stock yards, Nashville Abattoir, Hide & Melting Asso. v. L. & N. R. Co., 40 I. C. C. 134, 139. Scope of transportation. American Paper & Pulp Asso. v. B. & O. R. R. Co., 41 I. C. C. 506, 511, 512; Railroad Com. of Fla. v. F. E. C. Ry. Co., 42 I. C. C. 616, 625. Street Cars Excluded. James v. W. & O. D. Co., 44 I. C. C. 570, 573. Railroad defined. St. Louis Mo-Ill. Passenger fares, 41 I. C. C. 584, 587, 589, 590. Transportation a Public Service. The Car Peddling Case, 45 I. C. C. 494, 501.

§ 338. **Duty of Carrier to Furnish Transportation and to Establish Through Routes.**—It shall be the duty of every common carrier subject to this Act engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this Act participating therein which shall not unduly prefer or prejudice any of such participating carriers.

Paragraph 4, section 400, Transportation Act 1920; Interstate Commerce Act, section 1, paragraph 4. The former section read:

It shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations

with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to these entitled thereto.

This section is part of Par. 2 Section 1 of the Act as amended by the Act of June 18, 1910. The amendment added by Act June 29, 1906 read:

And it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

The original Act did not compel or empower the Commission to compel the establishment of through routes. Chicago & A. R. Co. v. Penn. Co., 1 I. C. C. 86, 1 C. R. 357; Little Rock & M. R. Co. v. East Tenn., Va. & Ga. R. Co., 3 I. C. C. 1, 2 I. C. R. 454, citing English law and recommending amendments. Commerical Club. of Omaha v. Chicago, Rock I. & P. Ry. Co., 6 I. C. C. 647, 677; Gustin v. Ill. Cent. R. Co., 7 I. C. C. 376. And carriers could make through routes with one road and not with others. Capeheart v. L. & N. R. Co., 4 I. C. C. 265, 3 I. C. R. 278. When through routes are established they must be kept open to public use. Consolidated Forwarding Co. v. So. Pac. Co., 9 I. C. C. 182, 205. Order enforced. Int. Com. Com. v. So. Pac. Co., 123 Fed. 597, 132 Fed. 829. Circuit court reversed. 200 U. S. 536, 50 L. Ed. 585, 26 Sup. Ct. 330. See same case, 10 I. C. C. 590. Through route ordered established. Cattle Raisers Asso. of Texas v. Galveston, H. & S. A. Ry. Co., 12 I. C. C. 20; Birmingham Packing Co. v. Tex. & Pac. Ry. Co., 12 I. C. C. 29, 500; American National Live Stock Asso. v. Tex. & Pac. Ry. Co., 12 I. C. C. 32; Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co., 14 I. C. C. R. 364. Through routes and through rates discussed and defined. Re Through Routes and Through Rates, 12 I. C. C. 163. Indemnity may be required of an irresponsible carrier before compelling through route and joint rate. Enterprise Transportation Co. v. Penn. R. Co., 12 I. C. C. 326. Where a reasonable through route exists, the law does not require the Commission to establish another through route. Loup Creek Colliery Co. v. Va. Ry. Co., 12 I. C. C. 471; Stedman v. Chicago & N.

W. R. Co., 13 I. C. C. 167; Chicago & M. Elec. R. Co. v. Ill. Cent. R. Co., 13 I. C. C. 20; Cardiff Coal Co. v. Chicago, M. & St. P. R. Co., 13 I. C. C. 460; Crane R. Co. v. Philadelphia & R. Co., 15 I. C. C. 248. When all parties are before it, the Commission will fix through routes and joint rates. Merchants Traffic Asso. v. New York, N. H. and H. R. Co., 13 I. C. C. R. 225. Section cited Enterprise Fuel Co. v. Penn. R. Co., 16 I. C. C. 219, 221.

**Notes of Decision Rendered Since 1909.**

See Sections 377, 400 and 400, *post*.

Construing the statute as it existed prior to the amendment of 1910 with the provisions of Sec. 3, *post*, Sec. 377, and Sec. 15, *post*, Sec. 400, it was held that through routes could not be established if "reasonable and satisfactory" through routes already existed. Enterprise Fuel Co. v. P. R. R. Co., 16 I. C. C. 219. This limitation taken away by amendment of 1910. Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 185. Carriers must not discriminate in establishing through routes. Wichita Falls System Joint Coal Rate Cases, 26 I. C. C. 215, 222; St. Louis S. & P. R. R. Co. v. P. & P. N. Ry. Co., 26 I. C. C. 226, 234, 235. Through routes established over interurban lines—See also cases cited—Louisville Board of Trade v. I. C. & S. T. Co., 27 I. C. C. 499. Construed in connection with a further provision of Sec. 1 *post* Sec. 402. Huerfano Coal Co. v. C. & S. E. R. A. Co., 28 I. C. C. 502, 505; Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 690. Limitation on power of Commission under Act 1906. Int. Com. Com. v. D. L. & W. R. R. Co., 216 U. S. 531, 54 L. Ed. 605, 30 Sup. Ct. 415. But the amendment of 1910 gives the Commission a discretion. Crane Iron Works v. U. S., 209 Fed. 238, Op. Com. Ct. No. 55, p. 453; Crane Iron Works v. P. & R. Ry. Co., 15 I. C. C. 248; Crane Iron Works v. C. R. R. Co. of N. J., 17 I. C. C. 514; Truckers' Transfer Co. v. C. & W. C. Ry. Co., 27 I. C. C. 275; and Manufacturers Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 120; Decatur Nav. Co. v. L. & N. R. Co., 31 I. C. C. 281 and cases cited. Pacific Navigation Co. v. So. Pacific Co., 31 I. C. C. 472; Port Huron & Duluth S. S. Co. v. P. R. Co., 35 I. C.

C. 475; Federal Sugar Refining Co. v. Central of New Jersey R. Co., 35 I. C. C. 488.

**Notes of Decisions Rendered Since 1915.**

Railroads can not make routes for the purpose of reserving markets to themselves. Eastern Oreg. Lumber Producers Asso. v. C. B. & Q. R. Co., 39 I. C. C. 316. A National system of railroads should be established. Louisville B. of T. v. L. & N. R. Co., 40 I. C. C. 679, 689. "Through Route" defined. Lourie Mfg. Co. v. C. N. R. Co., 42 I. C. C. 448, 450. Section violated. Menasha Paper Co. v. Chicago & N. W. R. Co., 241 U. S. 55, 60 L. Ed. 885, 36 Sup. Ct. 501. Tanks cars can not be required to be furnished. United States v. P. R. Co., 242 U. S. 208, 61 L. Ed. 251, 37 Sup. Ct. 95. The power to require through routes may be exerted over carriers who do not with their own rails reach the terminal point. St. Louis S. W. R. Co. v. United States, 245 U. S. 136, 62 L. Ed. 199, 38 Sup. Ct. 49.

§ 339. **All Transportation Charges Must be Reasonable.**—All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

First part of paragraph 5, section 1 as amended by section 400, Transportation Act 1920. The former section read: All charges made for any service rendered or to be rendered in the transportation of passengers or property and for the transmission of messages by telegraph, telephone or cable as aforesaid, or in connection therewith, shall be just and reasonable and every unjust and unreasonable charge for such service, or any part thereof, is prohibited and declared to be unlawful.

Part of paragraph three, section one, as amended by Act 1910.

The original Act read as follows:

"All charges made for any service rendered or to be rendered in the transportation of passengers or property

as aforesaid, or in connection therewith, *or for the receiving, delivering, storage, or handling of such property,* shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

Provision applies to exceptional charges under section four. Re Southern Railway & Steamship Asso. (Re Petition of L. & N. R. Co.) 1 I. C. C. 57, 1 I. C. R. 278. A rate might not violate this section yet be illegal because discriminatory. Raymond v. Chicago, M. & St. P. Ry. Co., 1 I. C. C. 230, 1 I. C. R. 627. A carrier should not make rates for the purpose of keeping a commodity on its line. Reynolds v. W. N. Y. & P. R. Co., 1 I. C. C. 393, 1 I. C. R. 685. what must be considered in determining the reasonableness of a rate. Boston Chamber of Commerce v. Lake Shore, etc., R. Co., 1 I. C. C. 436, 1 I. C. R. 754. An intermediate local rate should not exceed the through rate plus the local back to the intermediate point. Martin v. So. Pac. Co., 2 I. C. C. 1, 2 I. C. R. 1. Rate may be fixed on other than a mileage basis. La Crosse M. & J. Union v. Chicago, M. & St. P. R. Co., 11 I. C. C. 629, 2 I. C. R. 9. All surrounding circumstances and conditions must be considered in determining what is a reasonable rate. Bus. Men's Asso. of Minn. v. Chicago, St. P. & M. R. Co., 2 I. C. C. 52, 2 I. C. R. 41. Apportionment of rates between different parts of a line may be considered. Brady v. Penn. R. Co., 2 I. C. C. 131, 2 I. C. R. 78. No jurisdiction to increase rates. Re Chicago, St. P. & K. C. R. Co., 2 I. C. C. 231, 2 I. C. R. 137. Question a perplexing one involving a great variety of situations. Howell v. N. Y., L. E. & W. R. Co., 2 I. C. C. 272, 2 I. C. R. 162. Excessive rates not justified even when road earns little more than operating expenses. New Orleans Cotton Ex. v. Cincinnati, N. O. & T. P. R. Co., 2 I. C. C. 375, 2 I. C. R. 289. The fact that cost of transportation is exceedingly great by reason of the peculiar situation of a road should be considered. Rice v. W. N. Y. & Penn. R. Co., 2 I. C. C. 389, 2 I. C. R. 298. Through rates may be proportionately less than local rates. Lippman v. Ill. Cent. R. Co., 2 I. C. C. 584, 2 I. C. R. 414. Long maintenance of a rate evidence that it is reasonably low. Logan (Northwestern Iowa Grain & Stock

Shippers Asso. v. Chicago & N. W. R. Co., 2 I. C. C. 604; 2 I. C. R. 431. Mileage should be considered. McMorran v. Grand Trunk R. Co., 3 I. C. C. 252, 2 I. C. R. 604. Classification of freight legal. Thurber v. N. Y. Cent. & H. R. R. Co., 3 I. C. C. 473, 2 I. C. R. 742. The proportion of a through rate may be less than the local. New Orleans Cotton Exp. v. Ill. Cent. R. Co., 3 I. C. C. 534, 2 I. C. R. 777. Equitably graduated charges for like traffic having regard to amount of traffic is just. Lehman v. So. Pac. Co., 4 I. C. C. 1, 3 I. C. R. 80. In the carriage of the great staples which supply an enormous business and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding moderate profit are both justifiable and necessary. Re Alleged Excessive Freight Rates on Food products, 4 I. C. C. 48, 3 I. C. R. 93, 104; Mayor, etc., v. A. T. & S. F. Ry. Co., 9 I. C. C. 534; Farmers' etc., Club v. A. T. & S. F. Ry. Co., 12 I. C. C. 351, 360. As a general rule, the charge per ton mile should decrease with distance. Manufacturers & Jobbers Union of Mankato v. Minneapolis & St. L. R. Co., 4 I. C. C. 79, 3 I. C. R. 115; Hilton Lumber Co. v. Wilmington, etc., R. Co., 9 I. C. C. 17, 31. Commodity rates legal. New York Board of Trade v. Penn. R. Co., 4 I. C. C. 447, 3 I. C. R. 417. Order enforced. Int. Com. Com. v. Tex. & Pac. Ry. Co., 52 Fed. 187, 57 Fed. 948, 6 C. C. A. 653, 20 U. S. App. 1, 4 I. C. R. 408. Circuit court reversed. Texas & Pac. Ry. Co. v. Int. Com. Com. 162 U. S. 197, 40 L. Ed. 940, 16 Sup. Ct. 666. Classification and group rates legal. Coxe Bros. & Co. v. Lehigh Valley R. Co., 4 I. C. C. 535, 3 I. C. R. 460. Order not enforced. Int. Com. Com. v. Lehigh Valley R. Co., 74 Fed. 784. Elements to be considered in fixing rates on perishable fruits. Boston Fruit & Pro. Ex. v. New York & N. E. R. Co., 4 I. C. C. 664, 3 I. C. R. 493, 604, 5 I. C. C. 1. Comparison with rates of other localities not alone sufficient to show unreasonableness. Lincoln Creamery v. Union Pac. Ry. Co., 5 I. C. C. 156, 3 I. C. R. 794. Salt requires a relatively low rate, but should not be moved at unremunerative rates. Anthony Salt Co. v. Mo. Pac. R. Co., 5 I. C. C. 229, 4 I. C. R. 33. Rates should bear a fair relation to antecedent cost of production. Loud v. S. C. R. Co., 5 I.

C. C. 529, 4 I. C. R. 205. A local rate is p*rima facie* excessive as part of a through rate. Board of Trade of Troy v. Ala. M. R. Co., 6 I. C. C. 1. Order not enforced. Int. Com. Com. v. Ala. M. R. Co., 69 Fed. 227, 74 Fed. 715, 21 C C. A. 51, 168 U. S. 144, 42 L. Ed. 414, 18 Sup. Ct. 45. Cost of service only one element in determining reasonableness of rates. Schumacher Milling Co. v. Chicago, R. I. & Pac. Ry. Co., 6 I. C. C. 61, 4 I. C. R. 373. Transportation charges on rival companies or branch lines are to be considered in fixing rates. Morrel v. U. Pac. Ry. Co., 6 I. C. C. 121, 4 I. C. R. 469, 473. The value of comparisons depends upon the degree of similarity of circumstances. Freight Bureau of Cincinnati v. Cincinnati, N. O. & T. P. Ry. Co., 6 I. C. C. 195, 4 I. C. R. 592. Order not enforced. Int. Com. Com. v. Cincinnati, N. O. & T. P. Ry. Co., 76 Fed. 183, 167 U. S. 479, 42 L. Ed. 243, 17 Sup. Ct. 896. There is no necessary connection between rates between the same points in opposite directions. Duncan v. A. T. & S. F. Ry. Co., 6 I. C. C. 85, 103, 4 I. C. R. 385; Macloon v. Boston & M. R. Co., 9 I. C. C. 642. Rates on steel and iron equal to the average rates unjust, different cost of manufacturing the same product, no reason for different rate. Colorado Fuel & Iron Co. v. So. Pac. Co., 6 I. C. C. 488, 515. Order not enforced. So. Pac. Co. v. Colorado Fuel & Iron Co., 101 Fed. 779, 42 C. C. A. 12. For a comparison in rates to be of any value there must be substantial similarity. Evans v. U. Pac. Co., 6 I. C. C. 520. Rates must be relatively as well as absolutely just. Page v. Delaware, L. & W. R. Co., 6 I. C. C. 548. Financial necessities of carrier entitled to weight but not controlling. Jerome Hill Cotton Co. v. Mo. Kan. & Tex. R. Co., 6 I. C. C. R. 601, 622. Uniform blanket rate from all stations held unreasonable. Milk Producers Protective Asso. v. Delaware, L. & W. R. Co., 7 I. C. C. 92, 164. Distance an important element in determining reasonableness of rates. Freight Bureau of Cincinnati v. Cincinnati, N. O. & T. P. Ry. Co., 7 I. C. C. 180. Group Rates applied to cities considerable distance apart *prima facie* illegal. Commercial Club of Omaha v. Chicago & N. W. Ry. Co., 7 I. C. C. 386. Interstate rates are not required to conform to those fixed under state laws. Savannah Bureau of Freight & Transportation v. Charleston & S. Ry. Co., 7

I. C. C. 601. Principles of rate making discussed. Grain Shippers Asso. of Northwest Iowa v. Ill. Cent. R. Co., 8 I. C. C. R. 158. Rate per ton mile while valuable is not controlling. Gustin v. A. T. & S. F. R. Co., 8 I. C. C. 277. A rate can seldom be considered "in and of itself." Tileston Milling Co. v. N. Pac. Ry. Co., 8 I. C. C. 346, 361. Basing point system of the south disapproved. Board of Trade of Hampton v. N. C. & St. L. R. Co., 8 I. C. C. 503, 521. Order not enforced. Int. Com. Com. v. N. C. & St. L. R. Co., 120 Fed. 934. Storage is a service rendered and must be reasonable. Penn. Millers Asso. v. Philadelphia & R. R. Co., 8 I. C. C. 531. A rate long in existence *prima facie* reasonably high. Holmes & Co. v. So. Ry. Co., 8 I. C. C. 561. Must consider all circumstances affecting rates. Mayor and Council of Tifton v. L. & N. R. Co., 9 I. C. C. 160, 179. Reasons for a general advance not sufficient to show advance on particular commodity reasonable. National Hay Asso. v. Lake Shore, etc., Ry. Co., 9 I. C. C. 264, 304, 305. Order not enforced. Int. Com. Com. v. Lake Shore, etc., Ry. Co., 134 Fed. 942. Cost of service may legally produce a higher rate on less than carload than on carload shipments. Business Men's League of St. Louis v. A. T. & S. F. R. Co., 9 I. C. C. 318, 358. Transportation is not controlled by the law of supply and demand and is not to be sold to the highest bidder. Re Proposed Advances in Freight Rates, 9 I. C. C. 382. See also discussion of principles at pp. 395, 402, 405, 413. Presumption that a rate is reasonably high does not apply to a rate established by the Commission. Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co., 9 I. C. C. 440. Order enforced. Int. Com. Com. v. Cincinnati, H. & D. Ry. Co., 146 Fed. 559, 206 U. S. 142, 51 L. Ed. 995, 27 Sup. Ct. 648. May compare a rate with a lesser rate for a longer haul. Mayor, etc., of Wichita v. A. T. & S. F. R. Co., 9 I. C. C. 534, 552. May not refuse carload rating because consignee obtained title from different consignors. Buckeye Buggy Co. v. Cleveland, etc., R. Co., 9 I. C. C. 620. Rates may differ in reverse direction. MacLoon v. Boston & M. R. Co., 9 I. C. C. 642, citing Duncan v. A. T. & S. F. Ry. Co., 6 I. C. C. 85, 42 I. C. R. 385. May require purchase of tickets in order to obtain a reduced fare. Cist v. Mich. Cent. R. Co., 10 I. C. C. 217. Rate according to valuation of

fruit unreasonable and unjust. Georgia Peach Growers' Asso. v. Atlantic C. L. R. Co., 10 I. C. C. 255. Cannot distinguish in rates on commodities, because of method of loading. Glade Coal Co. v. B. & O. R. Co., 10 I. C. C. 226. Under the circumstances of this case, there should be no higher rate on cattle and hogs than on their products. Chicago Live Stock Exp. v. Chicago Great W. Ry. Co., 10 I. C. C. 428. Order not enforced. Int. Com. Com. v. Chicago Great W. Ry. Co., 141 Fed. 1003, 209 U. S. 108, 52 L. Ed. 705, 28 Sup. Ct. 493. Effect of prosperity of shipper, increased cost of transportation, long continued rate and a combination to advance rates discussed. Central Yellow Pine Asso. v. Ill. Cent. R. Co., 10 I. C. C. 505. Order enforced. Ill. Cent. R. Co. v. Int. Com. Com., 206 U. S. 441, 51 L. Ed. 1128, 27 Sup. Ct. 700. Tift v. So. R. Co., 10 I. C. C. 548, 123 Fed. 789, 138 Fed. 753; So. R. Co. v. Tift, 148 Fed. 1021, 206 U. S. 428, 51 L. Ed. 1124, 27 Sup. Ct. 709; Tift v. So. Ry. Co., 159 Fed. 555. Effect of long continuance of rate and of financial condition of carrier considered. Re Class and Commodity Rates St. Louis to Texas, 11 I. C. C. 238. Facts considered in arriving at a conclusion as to reasonableness of rates. Cattle Raisers' Asso. of Texas v. M. K. & T. Ry. Co., 11 I. C. C. 296. Classification must have reference to general shipments and not to a special shipper. Planters Compress Co. v. Cleveland, etc., R. Co., 11 I. C. C. 382, 606. Cost of service may not be ignored, but there are other matters of equal importance. Cannon v. M. & O. R. Co., 11 I. C. C. 537. Volume of traffic an argument for comparatively low rates. Farrar v. So. Ry. Co., 11 I. C. C. 632, 640. Single rates should be considered as part of the whole system. Hastings Malting Co. v. Chicago, M. & St. P. R. Co., 11 I. C. C. R. 675. Expense of delivery should not increase the rate more than such expense. Society of American Florists v. United States Exp. Co., 12 I. C. C. 120. Existence of a lower rate in remote past no probative value. Enterprise Mfg. Co. v. Georgia R. Co., 12 I. C. C. 130. Distance cannot be made the sole factor in rate making. Wilhoit v. M. K. & T. Ry. Co., 12 I. C. C. 138. Revenue per ton mile over other routes and lines not conclusive. Dallas Freight Bureau v. Gulf, etc. R. Co., 12 I. C. C. 223. Mere fact that an advance was the result of a com-

mination not sufficient to condemn it. China & Japan Trading Co. v. Georgia R. Co., 12 I. C. C. 236; Mayor of Bristol v. Virginia & S. W. R. Co., 15 I. C. C. 543. Rate fixed by a state Commission not binding on Interstate Commerce Commission. Hope Cotton Oil Co. v. Texas & Pac. R. Co., 12 I. C. C. 265. Grain a desirable traffic and entitled to low rate. Roswell Commercial Club v. A. T. & S. F. Ry. Co., 12 I. C. C. 339, 360, citing Mayor of Wichita v. A. T. & S. F. Ry. Co., 9 I. C. C. 534. Long existence of a rate not conclusive against the carrier. Warren Mfg. Co. v. So. R. Co., 12 I. C. C. 381. See Green Bay Bus. Men's Asso. v. B. & O. R. Co., 15 I. C. C. 59. Cotton waste should bear a lower rate than cotton goods. Riverside Mills v. So. R. Co., 12 I. C. C. 388. Expedited services charged for must be supplied. American Fruit Union v. Cincinnati, N. O. & T. P. R. Co., 12 I. C. C. 411. Prohibitive rates cannot be established. Poor v. Chicago, B. & Q. R. Co., 12 I. C. C. 418. Mere comparisons with other rates under different conditions not sufficient to establish unreasonableness of rates. Dallas Freight Bureau v. M. K. & T. R. Co., 12 I. C. C. R. 427. Rates unreasonable. Farmers Warehouse Co. v. L. & N. R. Co., 12 I. C. C. 457. May in some cases charge more where a line is composed of two roads than when it is composed of only one. Loup Creek Colliery Co. v. Va. R. Co., 12 I. C. C. 471. Can make no general ruling that through rates must not exceed the sum of the locals. Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. R. Co., 12 I. C. C. 498. Not unlawful to refuse to carry at car load rates mixed cars of mineral water and beer. Milwaukee, etc., Brewing Co. v. Chicago, M. & St. P. R. Co., 13 I. C. C. 28. Ordinarily joint through rate should be lower than sum of the locals. Laning-Harris Coal & Grain Co. v. Mo. Pac. R. Co., 13 I. C. C. 154; Flaccus Glass Co. v. Cleveland, etc., R. Co., 14 I. C. C. 333. Burnham, etc., Dry Goods Co. v. Chicago R. T. Co., 14 I. C. C. 299; Gump v. G. & O. R. Co., 14 I. C. C. 98; Payne-Gardner Co. v. L. & N. R. Co., 13 I. C. C. 638; Randolph Lumber Co. v. Seaboard A. L. Ry. Co., 14 I. C. C. 338; Sylvester v. Penn. R. Co., 14 I. C. C. 573. A railroad constructed for a special purpose is entitled to have that fact considered in making rates. Am. Asphalt Asso. v. Uintah Ry. Co., 13 I. C. C. 196. Capitalization and

value of property employed of little value in fixing express rates. Kindel v. Exp. Co., 13 I. C. C. 475, 485. Rule as to released rates. Re Released Rates. 13 I. C. C. 550. Improper to fix rates according to the use of a commodity. Ft. Smith Traffic Bureau v. St. L. & S. F. R. Co., 13 I. C. C. 651. Considerations involved in determining the reasonableness of rates. Thompson Lumber Co. v. Ill. Cent. R. Co., 13 I. C. C. 657, 664. Voluntary reduction of rates by a carrier does not alone prove former rate unreasonable. Ottumwa Bridge Co. v. Chicago, M. & St. P. R. Co., 14 I. C. C. 121. Storage charges for a reasonable time in which to remove freight part of the transportation and must be reasonable. New York Hay Ex. Asso. v. Penn. R. Co., 14 I. C. C. 178. In exceptional cases the through rate may exceed the sum of the locals. Randolph Lumber Co. v. Seaboard A. L. Ry. Co., 14 I. C. C. 338. citing Minneapolis, etc., R. Co. v. Minnesota, 186 U. S. 257, 262, 46 L. Ed. 1151, 22 Sup. Ct. 900. But see Lindsay Bros. v. Grand Rapids & I. Ry. Co., 15 I. C. C. 182; Michigan Buggy Co. v. Grand Rapids & I. Ry. Co., 15 I. C. C. 297. State rates though not binding on the Interstate Commission are valuable in determining the reasonableness of interstate rates. Corn Belt Meat Producers Asso. v. Chicago, B. & Q. Ry. Co., 14 I. C. C. 376. The question of the reasonableness of a rate one of fact and each case must stand upon its own record. Kansas City Hay Dealers Asso. v. Mo. Pac. Ry. Co., 14 I. C. C. 597; City of Spokane v. N. Pac. Ry. Co., 15 I. C. C. 376. Effect of increased cost of labor and materials. Shippers and Receivers Bureau of Newark v. New York, O. & W. Ry. Co., 15 I. C. C. 264. Statute declaratory of common law. Int. Com. Com. v. B. & O. R. Co., 43 Fed. 37, 42, 3 I. C. R. 192. Affirmed. 145 U. S. 263, 36 L. Ed. 699, 4 I. C. R. 92, 12 Sup. Ct. 844; Tift v. So. Ry. Co., 123 Fed. 789, 792, 138 Fed. 753; So. Ry. Co. v. Tift, 148 Fed. 1021, 206 U. S. 428, 51 L. Ed. 1124, 27 Sup. Ct. 709. Cannot recover for unreasonable charges except under statutes, as the United States has no common law. Swift v. Philadelphia & R. R. Co., 58 Fed. 858, 64 Fed. 59. Disapproved. Kinnavey v. Terminal R. Asso. of St. Louis, 81 Fed. 802, 804; Western Union Tel. Co. v. Call Publishing Co., 181 U. S. 92, 45 L. Ed. 765, 21 Sup. Ct. 561. In determining the question whether or not

a rate is reasonable rigorous theoretical rules cannot be adopted—circumstances that must be considered stated. Int. Com. Com. v. L. & N. R. Co., 73 Fed. 409, 419 to 426. Cost of service of a particular movement cannot be found by taking the average cost of all movements of same commodity. Int. Com. Com. v. Lehigh V. R. Co., 74 Fed. 784. The word "charges" used in section defined. Detroit, G. H. & M. Ry. v. Int. Com. Com., 74 Fed. 803, 21 C. C. A. 103, 43 U. S. App. 308, reversing 57 Fed. 1005, 4 I. C. R. 722. Affirmed. .167 U. S. 633, 42 L. Ed. 306, 17 Sup. Ct. 986. Reasons for the act. Van Patten v. Chicago, M. & St. P. Ry. Co., 81 Fed. 545. Question whether or not rates are reasonable a relative one and may be determined by comparison. Int. Com. Com. v. East Tenn., V. & G. Ry. Co., 85 Fed. 107, enforcing order in 5 I. C. C. 546, 2 I. C. R. 798, 3 id. 106, 4 id. 213. Affirmed. East T. V. & G. Ry. Co. v. Int. Com. Com., 99 Fed. 52. Reversed 181 U. S. 1, 45 L. Ed. 719, 21 Sup. Ct. 516. Mere fact of a greater charge for a shorter than a longer haul does not prove rate unreasonable. Int. Com. Com. v. Western & A. R. Co., 88 Fed. 186; Allen v. Oregon R. & Nav. Co., 98 Fed. 16; Int. Com. Com. v. Nashville, C. & St. N. S. & St. L. Ry. Co., 120 Fed. 934. Refusing to enforce order, 8 I. C. C. 503. Section defined, its purpose stated and a statement of what must be considered in determining the reasonableness of a rate. Int. Com. Com. v. Chicago G. W. Ry. Co., 141 Fed. 1003. Affirmed. 209 U. S. 108, 52 L. Ed. 705, 28 Sup. Ct. 493, where is stated the probative effect of a rate long in existence. Demurrage charges must be reasonable and such charges governed by section. Michie v. New York, N. H. & H. R. Co., 151 Fed. 694. The question of the reasonableness of a rate is a judicial one. Chicago, M. & St. P. Ry. Co. v. Minnesota, 134 U. S. 418, 33 L. Ed. 970, 981, 10 Sup. Ct. 462, 702. Under Act prior to June 29, 1906, Commission could determine the reasonableness of a particular rate, but could not prescribe rates. Cincinnati, N. O. & T. P. Ry. Co. v. Int. Com. Com., 162 U. S. 184, 40 L. Ed. 935, 16 Sup. Ct. 700. Int. Com. Com. v. Cincinnati, N. O. & T. P. Ry. Co., 167 U. S. 479, 511, 42 L. Ed. 243, 17 Sup. Ct. 896. Affirming 76 Fed. 183. Int. Com. Com. v. Ala. M. Ry. Co., 168 U. S. 144, 162, 42 L. Ed. 414, 18 Sup. Ct. 45. This power now specifically

given by Act June 29, 1906. Expenditures for permanent improvements should not be charged to current expenses. Ill. Cent. R. Co. v. Int. Com. Com., 206 U. S. 441, 51 L. Ed. 1128, 27 Sup. Ct. 700.

**Notes of Decisions Rendered Since 1909.**

A published rate not just and reasonable is not lawful when attacked—"Legal" and "lawful" distinguished—Arkansas Fuel Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 95, 97. Applies to mileage book rates. Commutation Rate Case, 21 I. C. C. 428, 442, 443. "Lawfulness" under Sec. 1 not to be confused with "legality" under Section 6. Crescent Coal & Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 156. Covers all cases of unreasonableness relatively and otherwise. Board of Trade of Chicago v. C. & A. R. R. Co., 27 I. C. C. 530, 535. Elevation is a service in connection with transportation. Elevation Allowances at St. Louis, 30 I. C. C. 696, 697. Value of the commodity a material fact. Western Advance Rate case 1915, 35 I. C. C. 497-606.

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The section means "that rates to be just and reasonable must be relatively fair as between localities similarly situated as well as reasonable per se." Corp. Com. of Va. v. C. & O. Ry. Co., 40 I. C. C. 24, 28. "The commerce of the country shall flow freely in established channels, without unnecessary hindrance, embarrassment or delay." Omaha Grain Exch. v. G. N. Ry. Co., 47 I. C. C. 532, 537.

§ 340. **Classification of Telegraph, Telephone and Cable Messages.**—Provided, that messages by wire or wireless subject to the provisions of this Act may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages: And provided, further, That nothing in this Act shall be construed to prevent telephone, telegraph, and cable companies from entering into contracts with common carriers for the exchange of services.

Proviso to paragraph 5 of section 1, Interstate Commerce Act as amended by Transportation Act 1920. The former section read: Provided, That messages by telegraph, telephone, or cable, subject to the provisions of this act, may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages: And provided further, That nothing in this act shall be construed to prevent telephone, telegraph and cable companies from entering into contracts with common carriers, for the exchange of services.

Added to Sec. 1 by Amendment of June 18, 1910.

Classification must be initiated by the carrier—White v. W. U. Tel. Co., 33 I. C. C. 500. Provision for limited liability valid. Western Union Tel. Co. v. Compton, — Ark. —, 169 S. W. 946, *contra*, Bailey v. Western Union Tel. Co., 171 S. W. 839. State laws relating to delivery of telegrams superseded by Act. Norfolk Truckers Exchange v. Western Union Tel. Co., 82 S. E. 92; W. U. Tel. Co. v. First National Bank, 83 S. E. 424.

Rule that misquoting a rate does not relieve from payment of correct rate does not apply to telegraph companies. Higbee v. W. U. Tel. Co., 179 Mo. App. 195, 166. S. W. 825.

**Notes of Decisions Rendered Since 1915.**

Telephone calls may be classified. Malone v. New York Tel. Co., 40 I. C. C. 185. Section construed. Unrepeated Message Case, 44 I. C. C. 670. Discrimination condemned. Commercial Cable Co. v. Western Union Tel. Co., 45 I. C. C. 33. Wholesale theory not applicable to common carriers of messages. Private Wire Contracts, 50 I. C. C. 731. Provision for notice of claim for damages valid. Gardner v. Western Union Tel. Co., 231 Fed. 405. Congress having taken possession of the field, a state may not prescribe a penalty for the negligent failure to deliver an interstate telegram. W. U. Tel. Co. v. Boegli, 250 U. S. —, 64 L. Ed. —, 40 Sup. Ct. —.

§ 341. **Classifications, Regulations and Practices Must be Reasonable.**—It is hereby made the duty of all common carriers subject to the provisions of this Act to establish,

observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this Act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this Act upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful.

Paragraph 6 of section 1, Interstate Commerce Act, as amended by section 400 Transportation Act 1920. The only change this Amendment made was to strike from the former section "such" before "unjust and unreasonable" third line from end of section, and before "is prohibited" in the last line to strike the words "with reference to commerce between the states and with foreign countries;" striking out this language from the former section, which section was added by the Commerce Court Act, shows that Congress intended to recognize the power of the Commission over intrastate rates which might unduly prejudice shippers paying interstate rates.

Section quoted in considering the character of cars furnished, Southwestern Mo. Millers Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 249. Quoted in reference to baggage shape and dimensions. Regulations Restricting the Dimensions of Baggage, 26 I. C. C. 292, 293. Classification a public function, principle of, discussed. Suspension of Western Classification, 25 I. C. C. 442; Western Trunk Line Rules, 34 I. C. C. 554.

§ 342. **Free Services with Certain Exceptions Prohibited and Penalties Prescribed.**—No common carrier subject to the pro-

visions of this act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge; to necessary care takers of live stock, poultry, milk and fruit; to employees on sleeping cars, express cars, and to lineman of telegraph and telephone companies; to railway mail service employees, postoffice inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation:

*And provided further, That this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees and their families of such telegraph, telephone, and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this act.*

Provided further, That the term "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm

in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier and the term "families" as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed and the widows during widowhood and minor children during minority of persons who died while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the person excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an act entitled "An act to further regulate commerce with foreign nations and among the states," approved February nineteenth, nineteen hundred and three, and any amendment thereof.

Paragraph 5 of section one of Act added by Act of June 29, 1906. and as further amended by Acts April 13, 1908, and June 18, 1910, which later Act amended the section by adding part in italics.

The Transportation Act 1920 changed the number of the paragraph to 7.

Paragraph 4 of section one of the Act of June 29, 1906, read as follows:

"No common carrier subject to the provisions of this act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation;

to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge and boards of managers of such homes; to necessary care takers of live stock, poultry and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail service employees, postoffice inspectors, customs inspectors and inmigration inspectors; to newsboys on trains, baggage agents; witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an act entitled "An act to further regulate commerce with foreign nations and among the states," approved February nineteenth, nineteen hundred and three and any amendment thereof.

The original Act did not expressly prohibit free transportation, and it was only when such transportation constituted discrimination and was not in the exception contained in section 22 that it was illegal. Ex parte Koehler, 31 Fed. 315. Re Charge to Grand Jury, 66 Fed. 146.

Evils of free transportation. First Annual Report of Int. Com. Com. 1 I. C. R. 650, 654. Not to be granted for influence. Slater v. N. Pac. R. Co., 2 I. C. C. 359, 2 I. C. R. 243; Harvey v. L. & N. R. Co., 5 I. C. C. 153, 3 I. C. R. 793. Re Carriage of Persons Free, 5 I. C. C. 69, 3 I. C. R. 717. Land and immigration agents not entitled to free transportation. Re

Complaint of Illinois Central R. Co., 12 I. C. C. 7. Certain employees of telegraph companies may receive free or reduced transportation. Re Railroad Telegraph Companies, 12 I. C. C. 10. Newspaper employees whose duties are to assort papers on special newspaper trains not entitled to free trans- Companies for Free Transportation, 16 I. C. C. 246. The Com- 12 I. C. C. 15. Not allowed to baggage express companies. Re Exchange of Free Transportation Between Railroads and Baggage Express Companies, 12 I. C. C. 39. Rule between express and railroad companies. Re Contracts of Express Companies for Free Transportation, 16 I. C. C. 2466. The Commission holds that ministers engaged in other than pastoral work may legally be accorded special transportation privileges. Re Passes to Clergymen, 15 I. C. C. 45. Act does not affect valid subsisting contracts for free transportation. Mottley v. L. & N. R. Co., 150 Fed. 406, *contra*, 219 U. S. 467, 55 L. Ed. 297, 31 Sup. Ct. 265, 34 L. R. A. (N. S.) 671. Kurry v. Kansas & C. P. Ry., 58 Kansas 6, 48 Pac. 579. Express franks illegal, even to officers and employees. United States v. Wells Fargo Express Co., 161 Fed. 606; American Ex. Co. v. United States, 212 U. S. 522, 53 L. Ed. 635, 29 Sup. Ct. 315. Contract to furnish transportation for advertising illegal. United States v. Chicago, etc., R. Co., 163 Fed. 114.

The amendment of 1910 relating to express and telephone passes and franks is indicated by italics.

The decision in the case of United States v. Wells-Fargo Ex. Co., was rendered prior to the amendment of 1910.

**Notes of Decisions Rendered Since 1909.**

Meaning of "employees on express cars" discussed. Re Contracts for Free Transportation, 16 I. C. C. 246, 249. Evils of giving passes, even though intrastate to interstate shipper discussed. Colorado Free Pass Investigation, 26 I. C. C. 491, 494; Montana Pass Situation, 29 I. C. C. 411; Five Per Cent case, 31 I. C. C. 351, 410. Contract for annual pass not valid. Louisville & N. R. R. Co. v. Mottley, 219 U. S. 467, 55 L. Ed. 297, 31 Sup. Ct. 265, 34 L. R. A. (N. S.) 671. Violation of law to sell a free pass to one not entitled to use it. U. S. v. Martin, 176 Fed. 110.

See notes to Sec. 22 of Act. Sec. 442—post.

**Notes of Decisions Rendered Since 1915.**

Express franks unlawful. Legality of Express Franks. 50 I. C. C. 599. Passes for caretakers of live stock lawful. Wiley v. Grand Trunk Ry. Co., 227 Fed. 127; Tripp v. M. Cent. R. Co., 238 Fed. 449, 151 C. C. A. 385. A contract for a pass, valid when made, can be liquidated in damages. N. Y. Cent. & H. R. Co. v. Gray, 239 U. S. 583, 60 L. Ed. 451, 36 Sup. Ct. 176. Riding on tender of interstate train by permission of engineer violates this section. Ill. Cent. R. Co. v. Messina, 240 U. S. 395, 60 L. Ed. 709, 36 Sup. Ct. 368.

§ 342A. **Excepting Cincinnati Southern Railway.**—Nothing contained in the Act to Regulate Commerce, approved February fourth, eighteen hundred and eighty-seven, or the Acts amendatory thereof, shall be so construed by the Interstate Commerce Commission, or by the Courts, as to prevent the lessee of the Cincinnati Southern Railway from complying with its obligation assumed in leasing said railway to furnish free transportation to the trustees of said Cincinnati Southern Railway, their officers and agents. Provided, That the free transportation referred to shall be furnished only when persons entitled thereto are traveling on the business of the company.

Act of Feb. 17, 1917, Chapter 84, 39 Stat. 922, Comp. Stat. Supp. 1919, Section 8563A.

§ 343. **Railroad Companies Prohibited from Transporting Commodities in Which They Are Interested, with Certain Exceptions.**—From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any state, territory or the District of Columbia, to any other state, territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

**Paragraph 6, section one, of Act as added by Act June 29, 1906, changed to 8 by Transportation Act 1920. Unconstitutional. United States v. Delaware & H. Co., 164 Fed. 215, 22d Annual Report Interstate Com. Com. (1908) 17. Circuit court reversed and section held valid as construed by Supreme Court. United States v. Delaware & H. Co., 213 U. S. 366, 53 L. Ed. 836, 29 Sup. Ct. 527. Does not apply to intrastate shipment. Central Trust Co. v. Pittsburg, etc., R. Co., 101 N. Y. Sup. 837, 114 App. Div. 907.**

**Notes of Decision Rendered Since 1909.**

Cited as prohibiting carrier from transporting coal mined by it. Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 27 I. C. C. 554, 556. Applies to a corporation owned by the carrier when the corporation has no real independent existence and distinguishing U. S. v. Delaware & H. Co., 213 U. S. 366, 53 L. Ed. 836, 29 Sup. Ct. 527—that facts fail to show clause applies. Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682. United States v. Lehigh Valley R. Co., 220 U. S. 257, 55 L. Ed. 458, 31 Sup. Ct. 387. Statute valid and held that hay for animals used in coal mines owned by carrier within the provision. Delaware, L. & W. R. Co. v. U. S., 231 U. S. 363, 58 L. Ed. 269, 34 Sup. Ct. 65. The question relating to the provision not so presented as to require decision. United States v. B. & O. R. Co. Sugar Lighterage Case, 231 U. S. 274, 58 L. Ed. 218, 34 Sup. Ct. 75, affirming Baltimore & O. R. Co., 200 Fed. 779, Opin. Com. Ct. No. 381, 499. For decisions of Commission, see Federal Sugar Refining Co. v. B. & O. R. Co., 17 I. C. C. 40, 20 I. C. C. 200. Statute and decisions applied and questions fully discussed. U. S. v. Delaware, L. & W. R. Co., 213 Fed. 240. See same case United States v. D. L. & W. R. Co., 238 U. S. 516, 59 L. Ed. 1438, 35 Sup. Ct. 873. Citing and discussing the clause. Rates for transportation of Anthracite Coal, 35 I. C. C. 220, 248.

**Notes of Decisions Rendered Since 1915.**

No conflict between this section and section 404, *post*. Allowances to Kanawha. Glen Jean & Eastern, 41 I. C. C. 53, 59. Mere ownership of stock in company owning the com-

modity not prohibited. The Alaska Investigation 44 I. C. C. 680, 709. The duty to enforce this clause is public. Ketchum v. Denver & R. G. Co., 248 Fed. 106, 111.

§ 344. **Terms under Which Switch Connections Shall Be Made.**—Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper *or owner of such lateral, branch line of railroad,* such shipper *or owner of such lateral, branch line of railroad* may make complaint to the Commission, as provided in section thirteen of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

Last paragraph, section one, of Act as added by Act of June 29, 1906, and June 18, 1910, which later added clause is italicised, par. 9, Transportation Act 1920.

Under paragraph 2, section 3, of this Act prior to the amendment of June 29, 1906, switch connections could be ordered when the failure to do so constituted discrimination. Red Rock Fuel Co. v. Balt. & O. R. Co., 11 I. C. C. 438. Written application must be made to give the Commission jurisdic-

tion. Barden & S. v. Lehigh V. R. Co., 12 I. C. C. 193. Connection ordered. McRae T. Ry. v. So. Ry. Co., 12 I. C. C. 270, 545. Carriers should not repay shippers for switch connections with transportation. Weleetka Light & Water Co. v. Ft. Smith & W. R. Co., 12 I. C. C. R. 503. Section discussed and construed. Rahway Valley R. Co. v. Delaware, L. & W. R. Co., 14 I. C. C. 191; McCormick v. Chicago, B. & Q. R. Co., 14 I. C. C., 611. State court may in absence of action by Commission compel switch connection. Mo. Pac. R. Co. v. Larabee Flour Mills Co., 211 U. S. 612, 53 L. Ed. 352, 29 Sup. Ct. 214. See also Wisconsin, etc., R. Co. v. Jacobson, 179 U. S. 287, 45 L. Ed. 194, 21 Sup. Ct. 115.

**Notes of Decision Rendered Since 1909.**

Prior to amendment of 1910 held that a lateral branch railroad could not apply for a switch connection. Int. Com. Com. v. Delaware, L. & W. R. Co., 216 U. S. 531, 54 L. Ed. 605, 30 Sup. Ct. 415, affirming. Delaware, L. & W. Co. v. Int. Com. Com., 166 Fed. 498. The private track to be connected must exist. Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 687. Joint rates denied. Blakely S. R. Co. v. A. C. L. R. R. Co., 26 I. C. C. 344. To be read with provisions requiring transportation to be furnished and applies to lateral branch roads whether plant facilities or not. Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 505. It is not illegal to require a switch connection for the use of only one shipper. Union Lime Co. v. C. & N. W. Ry. Co., 233 U. S. 211, 58 L. Ed. 924, 34 Sup. Ct. 522; Federal Sugar Refining Co. v. Central of N. J. R. Co., 35 I. C. C. 488. State law only indirectly affecting interstate commerce valid. L. & N. R. R. Co. v. Hidgon, 234 U. S. 592, 58 L. Ed. 1184, 34 Sup. Ct. 948.

**Notes of Decisions Rendered Since 1915.**

Section restricted to lateral branch lines. Montana v. P. C. C. & St. L. Ry. Co., 48 I. C. C. 728, 729 and cases cited. See also section 191, *ante* and 347, *post*.

§ 344A. **Car Service Defined.**—The term "car service" in this Act shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives,

cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this Act.

Paragraph 10 of section 1 of Interstate Commerce Act, originally paragraph 1 of Act May 24, 1917 and of August 10, 1917, Transportation Act 1920, sec. 402. Sections 344A to 344H are taken from the Acts of May 29 and August 10, 1917 as amended by the Transportation Act 1920, sections 402, 403 and those sections are now paragraphs 10 to 17, section 1, of the Interstate Commerce Act.

§ 344B. **Duty of Carrier to Furnish Safe and Adequate Car Service.**—It shall be the duty of every carrier by railroad subject to this Act to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

Paragraph 11 of Section 1 Interstate Commerce Act.

§ 344C. **Duty of Carriers to Make Reasonable Distribution of Cars.**—It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine. Failure or refusal so to do shall be unlawful, and in respect of each car not so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing shall forfeit to the United States the sum of $100 for each offense, which may be recovered in a civil action brought by the United States.

Paragraph 12, section 1, Interstate Commerce Act.

§ 344D. **Schedule of Car Service Must be Filed.**—The Commission is hereby authorized by general or special orders to require all carriers by railroad subject to this Act, or any of them, to file with it from time to time their rules and regulations with respect to car service, and the Commission may, in its discretion, direct that such rules and regulations shall be incorporated in their schedules, showing rates, fares, and charges for transportation, and be subject to any or all of the provisions of this Act relating thereto.

Paragraph 13, section 1, Interstate Commerce Act.

§ 344E. **Authority of Commisison to Establish Car Service Rules.**—The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service by carriers by railroad subject to this Act, including the compensation to be paid for the use of any locomotive, car, or other vehicle not owned by the carrier using it, and the penalties or other sanctions for nonobservance of such rules, regulations or practices.

Paragraph 14, section 1, Interstate Commerce Act.

§ 344F. **Authority of Commission to Require Joint Use of Terminals.**—Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine: (a) to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the Commission; (b) to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars, and other vehicles, during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the people, upon such terms

of compensation as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable; (c) to require such joint or common use of terminals, including main-line track or tracks for a reasonable distance outside of such terminals, as in its opinion will best meet the emergency and serve the public interest, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable; and (d) to give directions for preference or priority in transportation, embargoes, or movement of traffic under permits, at such time and for such periods as it may determine, and to modify, change, suspend, or annul them. In time of war or threatened war the President may certify to the Commission that it is essential to the national defense and security that certain traffic shall have preference or priority in transportation, and the Commission shall, under the power herein conferred, direct that such preference or priority be afforded.

Paragraph 15, section 1, Interstate Commerce Act.

§ 344G. **Routing Regulations.**—Whenever the Commission is of opinion that any carrier by railroad subject to this Act is for any reason unable to transport the traffic offered it so as properly to serve the public, it may, upon the same procedure as provided in paragraph (15), make such just and reasonable directions with respect to the handling, routing, and movement of the traffic of such carrier and its distribution over other lines of roads, as in the opinion of the Commission will best promote the service in the interest of the public and the commerce of the people, and upon such terms as between the carriers as they may agree upon, or in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable.

Paragraph 16, section 1, Interstate Commerce Act. See also 396a and 396b, *post*.

§ 344H. **Commission May Act by Agents—Penalties.**—The directions of the Commission as to car service and to the matters referred to in paragraphs (15) and (16) may be made through and by such agents or agencies as the Com-

mission shall designate and appoint for that purpose. It shall be the duty of all carriers by railroad subject to this Act, and of their officers, agents, and employees, to obey strictly and conform promptly to such orders or directions of the Commission, and in case of failure or refusal on the part of any carrier, receiver, or operating trustee to comply with any such order or direction such carrier, receiver, or trustee shall be liable to a penalty of not less than $100 nor more than $500 for each such offense and $50 for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States: Provided, however, That nothing in this Act shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable, freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act.

Paragraph 17, section 1, Interstate Commerce Act.

§ 344I. **Extension and Abandonment of Present Railroad Facilities.**—After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

Paragraph 18, section 1, Interstate Commerce Act, added by Transportation Act 1920, section 402.

§ 344J. **Procedure In Applying For Extensions or Abandonments.**—The application for and issuance of any such certifi-

cate shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this Act shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complainants or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

Paragraph 19, section 1, Interstate Commerce Act, added by section 402, Transportation Act 1920.

§ 344K. **Further Procedural Rules—Penalties.**—The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this

paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.

Paragraph 20, section 1, Interstate Commerce Act, added by section 402, Transportation Act 1920.

§ 344L. **Commission May Require Extension of Facilities.** The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this Act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines: Provided, That no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier subject to this Act which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall be liable to a penalty of $100 for each day during which such refusal or neglect continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

Paragraph 21, section 1, Interstate Commerce Act, added by section 402, Transportation Act 1920.

§ 344M. **Facilities Solely Within One State Exempted.**—The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.

Paragraph 22, section 1, Interstate Commerce Act, added by section 402, Transportation Act 1920.

§ 344N. **Punishment For Obstructing Interstate or Foreign Commerce.**—On and after the approval of this Act any per-

son or persons who shall, during the war in which the United States is now engaged, knowingly and willfully, by physical force or intimidation by threats of physical force obstruct or retard, or aid in obstructing or retarding, the orderly conduct or movement in the United States of interstate or foreign commerce, or the orderly make-up or movement or disposition of any train, or the movement or disposition of any locomotime, car, or other vehicle on any railroad or elsewhere in the United States engaged in interstate or foreign commerce shall be deemed guilty of a misdemeanor, and for every such offense shall be punishable by a fine of not exceeding $100 or by imprisonment for not exceeding six months or by both such fine and imprisonment; and the President of the United States is hereby authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of the passage of the mail, or of the orderly conduct or movement of interstate or foreign commerce in any part of the United States, or of any train, locomotive, car, or other vehicle upon any railroad or elsewhere in the United States engaged in interstate or foreign commerce: Provided, That nothing in this section shall be construed to repeal, modify, or affect either section six or section twenty of an Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen.

Paragraph 23, section 1, Interstate Commerce Act, as numbered by Transportation Act 1920. The section is taken from Act of August 10, 1917, chap. 51, paragraph 9. See also Anti-trust Law, section 500, 517, *post*.

§ 3440. **Provisions Relating to Duties of Carriers During War.**—During the continuance of the war in which the United States is now engaged the President is authorized, if he finds it necessary for the national defense and security, to direct that such traffic or such shipments of commodities as, in his judgment, may be essential to the national defense and security shall have preference or priority in transportation by any common carrier by railroad, water, or otherwise. He may give these directions at and for such times as he

may determine, and may modify, change, suspend, or annul them, and for any such purpose he is hereby authorized to issue orders direct, or through such person or persons as he may designate for the purpose or through the Interstate Commerce Commission. Officials of the United States, when so designated, shall receive no compensation for their services rendered hereunder. Persons not in the employ of the United States so designated shall receive such compensation as the President may fix. Suitable offices may be rented and all necessary expenses, including compensation of persons so designated, shall be paid as directed by the President out of funds which may have been or may be provided to meet expenditures for the national security and defense. The common carriers subject to the Act to Regulate Commerce or as many of them as desire so to do are hereby authorized without responsibility or liability on the part of the United States, financial or otherwise, to establish and maintain in the city of Washington during the period of the war an agency empowered by such carriers as join in the arrangement to receive on behalf of them all notice and service of such orders and directions as may be issued in accordance with this Act, and service upon such agency shall be good service as to all the carriers joining in the establishment thereof. And it shall be the duty of any and all the officers, agents, or employees of such carriers by railroad or water or otherwise to obey strictly and conform promptly to such orders, and failure knowingly and willfully to comply therewith, or to do or perform whatever is necessary to the prompt execution of such order, shall render such officers, agents, or employees guilty of a misdemeanor, and any such officer, agent or employee shall, upon conviction, be fined not more than $5,000, or imprisoned not more than one year, or both, in the discretion of the court. For the transportation of persons or property in carrying out the orders and direction of the President, just and reasonable rates shall be fixed by the Interstate Commerce Commission; and if the transportation be for the Government of the United States, it shall be paid for currently or monthly by the Secretary of the Treasury out of any funds not otherwise appropriated. Any carrier complying with any such order or direction for preference or

priority herein authorized shall be exempt from any and all provisions in existing law imposing civil or criminal pains, penalties, obligations, or liabilities upon carriers by reason of giving preference or priority in compliance with such order or direction.

Paragraph 24 of section 1 Interstate Commerce Act as numbered by section 403 of Transportation Act 1920, being taken from Act August 10, 1917.

§ 345. **Definition and Prohibition of Unjust Discrimination.** —That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Section 2 of Interstate Commerce Act.

The Transportation Act 1920 changed the original Act by inserting where they appear above the words "or the transmission of intelligence" and the words "or transmission" and "or messages" otherwise the section is as enacted in 1887.

Modeled on § 90 English Act 1845. The Laws of Railway, by Browne & Theobald, 312, 313; Halsbury's Laws of England, Vol. 4, p. 74. Railroad Commissioners of Georgia v. Clyde Steamship Co., 5 I. C. C. 324, 4. I. C. R. 121, 140. The English Act is as follows:

"And whereas it is expedient that the company should be enabled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic but that such power of varying should not be used for the purpose of prejudicing or favoring particular parties or for the pur-

pose of collusively or unfairly creating a monopoly either in the hands of the company or of particular parties; it shall be unlawful, therefore, for the company, subject to the provisions and limitations herein and in the special act contained from time to time to alter or vary the tolls by the special act authorized to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit; provided, that all such tolls be at all times charged equally to all person, and after the same rate, whether per ton per mile, or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made either directly or indirectly in favor of or against any particular company or person traveling upon or using the railway."

Not violated by failure to allow same mileage to private car companies as to connecting carriers. Burton Stock Car Co. v. C. B. & Q. R. Co., 1 I. C. C. 132, 1 I. C. R. 329. Discrimination to allow large shippers a discount. Providence Coal Co. v. Providence & W. R. Co., 1 I. C. C. 107, 1 I. C. R. 316, 363. Mileage rates must be open to all. Larrison v. Chicago, etc., R. Co., 1 I. C. C. 147, 1 I. C. C. 369. Uniform and general regulations not illegal though more favorable to some than to other localities. Crews v. Richmond & D. R. Co., 1 I. C. C. 401, 1 I. C. R. 703, 712. Excursion rates legal. Associated Wholesale Grocers v. Mo. Pac. R. Co., 1 I. C. C. 156, 1 I. C. R. 321, 393. Low rates settlers' ticket must be open to all classes. Smith v. N. P. R. Co., 1 I. C. C. 208, I. C. R. 611; Elvey v. Ill. Cent. R. Co., 3 I. C. C. 652, 2 I. C. R. 804. Rates not unreasonably high may be illegal because discriminatory. Raymond v. Chi., M. & St. P. R. Co., 1 I. C. C. 230, 1 I. C. R. 474. 627. "Substantially similar circumstances and conditions" defined. Business Men's Asso. v. Chicago, St. Paul, M. & O. R. Co., 2 I. C. C. 52, 2 I. C. R. 41. Shipment of oil in barrels and in tanks should be at same rate. Rice v. L. & N. R. Co., 1 I. C. C. 503, 1 I. C. C. R. 354, 376, 443, 722; Schofield v. Lake, etc., R. Co., 1 I. C. R. 593, 2 I. C. R. 90, 2 I. C. R. 67; Rice v. Western

New York, etc., R. Co., 4 I. C. C. 131, 2 I. C. R. 298, 499; 3 id. 162; Price v. Cincinnati, etc., R. Co., 5 I. C. C. 193, 3 I. C. R. 841; Independent Refiners Asso. v. Penn. R. Co., 6 I. C. C. 52, 4 I. C. R. 162, 369, 5 I. C. C. 415, 2 I. C. R. 294, 296 4 I. C. R. 162. May classify immigrants for special rates. Savery v. New York Cent. etc., R. Co., 2 I. C. C. 338, 1 I. C. R. 695, 2 I. C. R. 210. Free transportation to obtain the influence of the holder in getting business illegal. Slater v. N. Pac. R. Co., 2 I. C. C. 359, 2 I. C. R. 32, 243. Mines in the same general territory may be grouped and take the same rate. Rend v. Chi. & N. W. R. Co., 1 I. C. C. 793, 812, 2 I. C. R. 540, 2 I. C. R. 313; Coxe v. Lehigh V. R. Co., 4 I. C. C. 535, 2 I. C. R. 195, 3 id. 460. Rates must be relatively fair in substance and in fact. Detroit Board of Trade v. Grand Trunk R. Co., 2 I. C. C. 315; 1 I. C. R. 699, 701, 2 I. C. R. 199. A carrier's percentage of a through rate may be less than the local charge for the same haul. Chamber of Commerce of Milwaukee v. Flint, etc., R. Co., 2 I. C. C. 533, 1 I. C. R. 774, 792, 2 I. C. R. 393; Lippman v. Ill. Cent. R. Co., 2 I. C. C. 584, 2 I. C. R. 414; New Orleans Cotton Exchange v. Ill. Cent. R. Co., 3 I. C. C. 534, 2 I. C. R. 460, 777; New York, New Haven, etc., R. Co. v. Platt, 7 I. C. C. 323. Mileage, excursion and commutation tickets must be offered impartially to all. Re Passenger Tariffs, 2 I. C. C. 649, 2 I. C. R. 445. Export rates ten cents per hundred less than the local rates held illegal. New York Produce Exchange v. New York, etc., R. Co., 3 I. C. C. 137, 2 I. C. R. 13, 28, 553. See Texas, etc., R. Co. v. Int. Com. Com., 162 U. S. 197, 5 I. C. R. 405, 40 L. Ed. 940, 16 Sup. Ct. 666. Through rates are not required to be made on a mileage basis. McMorran v. Grand Trunk R. Co., 3 I. C. C. 252, 2 I. C. R. 14, 19, 604. A through rate may be less than the sum of the locals. Chicago, Rock Island & Pacific R. Co. v. Chicago & Alton R. Co., 3 I. C. C. 450, 2 I. C. R. 581, 721. See also § 341, *supra*. Party rates less than individual rates illegal. Pittsburg, etc., R. Co. v. B. & O. R. Co., 3 I. C. C. 465, 2 I. C. R. 579, 720. Commission not sustained by courts. Int. Com. Com. v. B. & O. R. Co., 43 Fed. 37, 3 I. C. R. 192, 145 U. S. 263, 36 L. Ed. 699, 4 I. C. R. 92, 12 Sup. Ct. 844. Carriers

may make exclusive contracts for sleeping cars. Worcester Excursion Co. v. Penn. R. Co., 3 I. C. C. 577, 1 I. C. R. 811, 2 id. 12, 792. Mere quantity of shipments not alone sufficient to affect classification. 4 I. C. C. 212, 2 I. C. R. 625, 3 id. 257. Imported goods are not entitled to any preference rate from the port of entry to destination over domestic goods. New York Board of Trade, etc. v. Penn. R. Co., 4 I. C. C. 477, 2 I. C. R. 660, 734, 755, 800, 3 id. 417. See Texas & Pac. R. Co. v. Int. Com. Com., 162 U. S. 197, 40 L. Ed. 940, 16 Sup. Ct. 66, 5 I. C. R. 405. Classification may not be used to affect discrimination. Coxe v. Lehigh V. R. Co., 4 I. C. C. 535, 2 I. C R. 195, 229, 3 id. 460. Discrimination to transport, free, officials and persons of eminence. Re Carriage of Persons Free, 3 I. C. R. 612, 686, 717; Harvey v. L. & N. R. Co., 5 I. C. C. 153, 2 I. C. R. 662, 3 id. 793. Hypothetical weights must not be used to discriminate. Rice v. Cincinnati, etc., R. Co., 5 I. C. C. 193, 3 I. C. R. 841. Section compared with English act. Railroad Com. of Ga., Trammell et al. v. Clyde S. S. Co., 5 I. C. C. 324, 4 I. C. R. 120, 140. Order not enforced. Int. Com. Com. v. Western & A. R. Co., 88 Fed. 186, 93 Fed. 83, 35 C. C. A. 226, 181 U. S. 29, 45 L. Ed. 729, 21 Sup. Ct. 512. Lower rates on coal to special manufactures illegal, rates should not vary at different seasons of the year. Re Alleged Unlawful Charges for Transportation of Coal by L. & N. R. Co., 5 I. C. C. 446, 4 I. C. R. 157. Illegal to discriminate in the privileges relating to delivery of freight. Phelps v. Texas & Pac. R. Co., 6 I. C. C. 36, 4 I. C. R. 44. 104, 363. Not illegal to make a different rate on freight moving in oppsite directions over the same line. Business motive of shipper cannot be considered. Duncan v. A. T. & S. F. R. Co. et al., Duncan v. So. Pac. Co. et al., 6 I. C. C. 85, 3 I. C. R. 256, 4 I. C. R. 385; MacLoon v. Boston & M. R. Co., 9 I. C. C. 642. May make excursion rates different at different times. Cator v. So. Pac. Co., 6 I. C. C. 113, 4 I. C. R. 397. A carrier cannot legally use a development company in which it holds all the stock to purchase and ship commodities charging nothing therefor. Re Alleged Unlawful Rates and Practices in Transportation of Grain, 7 I. C. C. 33. Common ownership of a carrier company and a land

company will not prevent the land company from buying tickets from the carrier at full prices and selling them to guests of its hotel at half price. Wilson v. Rock Creek, etc., R. Co., 7 I. C. C. 83. Different rate by cwt. on train loads and car loads discriminatory. Paine v. Lehigh Valley, etc., R. Co., 7 I. C. C. 218. Reshipping at remainder of a through rate illegal. Re Alleged Unlawful Rates and Practices in the Transportation of Grain and Grain Products, 7 I. C. C. 240. Re Rates and Practices of the M. & O. R. Co., 9 I. C. C. 373; Cannon Falls, etc., Co. v. Chicago G. W. R. Co., 10 I. C. C. 650. See question suggested but not decided. Commercial Club of Omaha v. Chicago & R. I. R. Co., 6 I. C. C. 647; Duncan et al. v. N. C. & St. L. R. Co., 16 I. C. C. 590. Cannot divide rates with wagon carriers. Cary v. Eureka Springs R. Co., 7 I. C. C. 286. Terminal charges need not be exacted on all products alike nor at all markets. Cattle Raisers' Asso. of Texas v. Ft. Worth, etc., R. Co., 7 1 C. C. 513, 5-a. Commission's order not enforced. 98 Fed. 173, 103 id. 249, 43 C. C. A. 209, 186 U. S. 320, 46 L. Ed. 1182, 22 Sup. Ct. 824. Storage charges as well as other rules and regulations must not be discriminatory. American Warehousemen's Asso. v. Ill. Cent. R. Co., 7 I. C. C. 556. Goods exported may move to ports at a less rate than those consumed at the port. Kemble v. Boston, etc., R. Co., 8 I. C. C. 110. A difference in the rates on private cars may exist when the use thereof is different. Carr v. N. Pac. R. Co., 9 I. C. C. 1. The rule that as distance increases the rate per ton mile shall decrease is not required by the statute and is subject to exceptions and qualifications. Hilton Lumber Co. v. Wilmington, etc., R. Co., 9 I. C. C. 17. To entitle a shipper to a carload rating, the shipment should be from one consignor to one consignee under one bill of lading, but where the consignee is the owner, it is immaterial whether his title was obtained from one or more persons. Whether a carrier can deny carload rate to forwarding agent not decided. Buckeye Buggy Co. v. Cleveland, etc., R. Co., 9 I. C. C. 620; Bell Co. v. Baltimore, etc., R., 9 I. C. C. 632. "Tap line" divisions or a division of a through rate to a short line, such line being a common carrier, is legal. Central Yellow Pine Asso. v. Vicksburg S. & P. R. Co., 10 I. C. C. 193. See,

also, Re Transportation of Salt, 10 I. C. C. 148. Ownership of the terminal or "tap line" immaterial, but the division must be reasonable. Re Divisions of Joint Rates and Other Allowances to Terminal Roads. 10 I. C. C. 385. Where "tap line" not a common carrier, allowance illegal. Central Yellow Pine Asso. v. Ill. Cent. R. Co., 10 I. C. C. 505, 506. May make the charge on a minimum of 100 pounds at the rate taken by the particular commodity. Wrigley v. Cleveland, etc., R. Co., 10 I. C. C. 412. "Under substantially similar circumstances and conditions" defined and held that joint through rates less than the sum of the locals must be open to all. Capital City Gas Co. v. Central Vermont, etc., R. Co., 11 I. C. C. 104. Circumstances and conditions substantially dissimilar. City Gas. Co. v. B. & O. R. Co., 11 I. C. C. 371, 379. Cotton packed by the round bale process not entitled to a different rate than that packed in square bales. Planters Compress Co. v. Cleveland, etc., R. Co., 11 I. C. C. 382. A reconsignment rate may be higher than the carrier's proportion of the through rate. St. Louis Hay & Grain Co. v. Ill. Cent. R. Co., 11 I. C. C. 486, 496; Same v. M. & O. R. Co., id. 101. There should be uniformity in the relation of rates on commodities differently packed. Cannon v. M. & O. R. Co., 11 I. C. C. 537. Carrier can not charge more for transferring freight brought from another line than for that originating on its own line. Blackwell Milling & Elevator Co., v. M., K. & Tt. Ry. Co., 12 I. C. C. 23. Ponca City Milling Co. v M. K. & T. Ry. Co., 12 I. C. C. 26. Party rate tickets must be poen to all. Re Party Rate Ticket, 12 I. C. C. 95. A carload of freight though owned by different persons and known as "bulked shipments," when under one bill of lading entitled to the regular carload rate. California Commercial Asso. v. Wells Fargo & Co., 14 I. C. C. 422; Export Shipping Co. v. Wabash R. Co., 14 I. C. C. 437. Order not enforced. Delaware, L. & W. R. Co. v. Int. Com. Com., 166 Fed. 499. Section two in effect prohibits free passes except for the classes mentioned in section twenty-two. Ex parte Kœhler, 31 Fed. 315, 12 Sawy. 466. Re Charge to Grand Jury, 66 Fed. 146. Unless pass is used no crime is committed. United States v. Mathews, 68 Fed. 880. Contract for rates based upon the amount of shipments void. Burlington, C. R. & N. R. Co.

v. Northwestern Fuel Co., 31 Fed. 652. (Reversed but this question not discussed. Tozer v. United States. 52 Fed. 917); John Hays & Co. v. Penn. Co., 12 Fed. 309. Followed citing English cases. Int. Com. Com. v. Tex. & Pac. Ry. Co., 52 Fed. 187, 190; Kinsley v. Buffalo, N. Y. & P. R. Co., 37 Fed. 181; United States v. Tozer, 39 Fed. 369, 904. Only unjust, undue or unreasonable discrimination forbidden. Kentucky & I. Bridge Co. v. L. & N. R. C., 37 Fed. 567, 624. See 2 I. C. C. 162, 2 I. C. R. 102. Not unlawful for carrier to compress cotton en route when privilege open to all. Cowan v. Bond, 39 Fed. 54. Not discriminative to decline to use a particular live stock car. United States v. Delaware, L. & W. R. Co., 40 Fed. 101. Party rate tickets at less rate than for a single ticket legal. Int. Com. Com. v. B. & O. R. Co., 43 Fed. 37, 46. Affirmed, 145 U. S. 263, 36 L. Ed. 699, 12 Sup. Ct. 844. May make a difference in rates for limited and unlimited tickets. United States v. Eagan, 47 Fed. 112. Illegal to charge less on freight from Liverpool than from New York, New Orleans, etc., to San Francisco. Int. Com. Com. v. Tex. & Pac. Ry. Co., 52 Fed. 187. Affirmed, 57 Fed. 948, 6 C. C. A. 653, 20 U. S. App. 1, 4 I. C. R. 408. Reversed, Tex. & Pac. Ry. Co. v. Int. Com. Com., 162 U. S. 197, 40 L. Ed. 940, 16 Sup. Ct. 666. That cotton reached Mobile by boat is no reason for charging more on a shipment to New Orleans than was charged on cotton brought to Mobile by other carriers. Bigbee & Warrior Rivers Packet Co. v. Mobile & Ohio R. Co., 60 Fed. 545. Rebate to one not a crime unless refused to others. United States v. Hanley, 71 Fed. 672. No rigid theoretical rules can be adopted to determine the question of discrimination. Int. Com. Com. v. L. & N. R. Co., 73 Fed. 409. Can not charge full local rate on freight delivered to one carrier, when the proportion of the through rate is charged to another. Augusta S. R. Co. v. Wrightsville & T. R. Co., 74 Fed. 522. Purpose of section discussed. Int. Com. Com. v. Alabama M. Ry. Co., 74 Fed. 715, 21 C. C. A. 51, 41 U. S. App. 453, 5 I. C. R. 685. Affirming 69 Fed. 227. Affirmed, 168 U. S. 144, 42 L. Ed. 414, 18 Sup. Ct. 45. Cartage is separated from the general charges referred to in section one, two, three and four of Act. Detroit, etc., Ry. Co. v. Int. Com. Com., 74 Fed. 803, 815, 21 C. C. A. 103, 43 U. S. App.

308. Reversing 57 Fed. 1005, 4 I. C. R. 722. Affirmed, 167 U. S. 633, 42 L. Ed. 306, 17 Sup. Ct. 986. What should be stated in a petition to recover damages for discrimination. Kinnavey v. Terminal R. Asso. of St. Louis, 81 Fed. 802. Section deals with preferences between shippers and not between localities. Int. Com. Com. v. Western & A. R. Co., 88 Fed. 186. Affirmed, 93 Fed. 83, 35 C. C. A. 217, 181 U. S. 29, 45 L. Ed. 729, 21 Sup. Ct. 512, refusing to enforce order in Railroad Com. of Ga. v. Clyde Line S. S. Co., 5 I. C. C. 324, 4 I. C. R. 120. Mere offer of discrimination not an offense. Lehigh Valley R. Co. v. Rainey, 112 Fed. 487, refusing motion for new trial. See 99 Fed. 596. Carriers not required to give same rate to forwarding agents as to owners of carload freight. Lundquist v. Grand Trunk W. Ry. Co., 121 Fed. 915; Delaware, L. & W. R. Co. v. Int. Com. Com., 166 Fed. 499. *Contra* under under English and Canadian Act. Packed Parcels Case. Great W. R. W. Co. v. Sutton L. R., 4 H. L. 226, MacMurchy & Denison's Canadian Ry. Law 496. Can not discriminate in favor of government in rates to its soldiers. United States v. Chicago & N. W. Ry. Co., 127 Fed. 785,62 C. C. A. 465. A carrier may in good faith buy a commodity and transport it at less than the regular rate. Int. Com. Com. v. Chesapeake & O. Ry. Co., 128 Fed. 59. Affirmed same case, but this proposition disapproved, 200 U. S. 361, 50 L. Ed. 515, 26 Sup. Ct. 272. Classification must be without discrimination. Int. Com. Com. v. Cincinnati, H. & D. Ry. Co., 146 Fed. 559. Affirmed. Cincinnati, H. & D. Ry. Co. v. Int. Com. Com., 206 U. S. 142, 51 L. Ed. 995, 27 Sup. Ct. 648. Reconsignment rate is violation of section. St. Louis Hay & Grain Co. v. So. Ry. Co., 149 Fed. 609. Affirmed. So. Ry. Co. v. St. Louis Hay & Grain Co., 153 Fed. 728,—C. C. A.—Reversed, 214 U. S. 297, 53 L. Ed. 1004, 29 Sup. Ct. 678. "Discrimination" defined. United States v. Wells Fargo Ex. Co., 161 Fed. 606. Discrimination illegal at common law. Atchision. T. & S. F. R. Co. v. Denver & N. O. R. Co., 110 U. S. 667, 28 L. Ed. 291, 4 Sup. Ct. 185. Service for local haul not the same as for through haul covering the local as well as additional haul. Union Pacific Ry. Co. v. United States, 117 U. S. 355, 29 L. Ed. 920, 6 Sup. Ct. 772. The discrimination must be unjust, undue or unreasonable, though

a rate reasonable under section one may violate sections two and three. Int. Com. Com. v. Baltimore & O. R. Co., 145 U. S. 263, 36 L. Ed. 699, 12 Sup. Ct. 844, affirming 43 Fed. 37. Carriers not released from liability to innocent parties to a bill of lading because a rebate is allowed. Merchants Cotton Compress and Storage Co. v. Ins. Co. of North America, 151 U. S 368, 38 L. Ed. 195, 206, 14 Sup. Ct. 367. Ocean competition may make a different circumstance. Section discussed. Statement made that it was modeled on section 90. English Act of 1845, and English cases cited. Tex. & Pac. R. Co. v. Int. Com. Com. 162 U. S. 197, 213, 219, 222, 224, 225, 40 L. Ed. 940, 945, 947, 948, 949, 16 Sup. Ct. 666. Reversing 57 Fed. 948, 6 C. C. A. 653, 20 U. S. App. 1, 4 I. C. R. 408. Prior to the Act to Regulate Commerce recovery could not be had for discrimination unless the charge was unreasonable. Parsons v. Chicago & N. W. R. Co., 167 U. S. 447, 42 L. Ed. 231, 17 Sup. Ct. 887. Allowance of cartage to one and not to all violates section. Wight v. United States, 167 U. S. 512, 42 L. Ed. 258, 17 Sup. Ct. 822. "Under substantially similar circumstances and conditions" refers to matter of carriage and does not include competition. id. While this is true of section two, it is not true of section four. Int. Com. Com. v. Alabama M. Ry. Co., 168 U. S. 144, 42 L. Ed. 414, 18 Sup. Ct. 45; East Tenn., Va. & Ga. Ry. Co. v. Int. Com. Com., 181 U. S. 1, 45 L. Ed. 719, 21 Sup. Ct. 516; Int. Com. Com. v. Clyde S. S. Co., 181 U. S. 29, 45 L. Ed. 729, 21 Sup. Ct. 512. See as to effect of free cartage on section four. Int. Com. Com. v. Detroit, etc., R. Co., 167 U. S. 633, 42 L. Ed. 306. 11 Sup. Ct. 986. Carriers cannot escape from provisions of section by electing to be a dealer in commodities shipped. New York, N. H. & H. R. Co. v. Int. Com. Com., 200 U. S. 361, 391, 392, 50 L. Ed. 515, 521, 26 Sup. Ct. 272. Commission has power to order carriers to cease from violating Act by discriminating between persons or localities. Cincinnati, H. & D. Ry. Co. v. Int. Com. Com., 206 U. S. 142, 51 L. Ed. 995, 27 Sup. Ct. 648.

**Notes of Decisions Rendered Since 1909.**

May not discriminate in favor of school children. Commutation Tickets to School Children, 17 I. C. C. 144, but see Int.

Ry. Co. v. Mass., 207 U. S. 79, 52 L. Ed. 111, 28 Sup. Ct. 26. No different rate on return shipment except where shipment refused by consignee. Reduced Rates on Returned Shipments, 19 I. C. C. 409, 416. Not violated by contract with only one auction company. Southwestern Produce Distributor v. W. R. R. Co., 20 I. C. C. 458. Ownership not a reason for different application of rates. California Commercial Ass'n v. Wells, Fargo & Co., 21 I. C. C. 300 citing cases. Section directed against "preferential charges." Commutation Rate case, 21 I. C. C. 428, 431. Cited in discussing demurrage charges. Demurrage Charges in State of California, 25 I. C. C. 314, 323. Section applies to shipment "over the same line, the same distance, under the same circumstances of carriage." Import Rates on Manganese Ore, 25 I. C. C. 633, 688, citing Int. Com. Com. v. B. & O. R. Co., 225 U. S. 326, 56 L. Ed. 1107, 32 Sup. Ct. 742; Wight v. U. S., 167 U. S. 512, 518, 42 L. Ed. 258, 17 Sup. Ct. 822. Discrimination not made by the defendant carrier but by other carrier. Coke Producers Ass'n v. B. & O. R. R. Co., 27 I. C. C. 125, 144, citing Ashland Fire Brick Co. v. S. Ry. Co., 22 I. C. C. 115, 120; Indiana Steel & Wire Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 155, Railroad Com. of Tenn. v. A. A. R. R. Co., 17 I. C. C. 418. Section discussed and "like" construed. Board of Trade of Chicago v. C. & A. R. R. Co., 27 I. C. C. 530, 534. Difference in switching charges, traffic moving from point of origin violates section. Richmond Chamber of Commerce v. S. A. L. Ry. Co., 30 I. C. C. 552. Section does not limit Elkins Act, Hocking Valley Ry. Co. v. U. S., 210 Fed. 735, 127 C. C. A. 285 affirming. U. S. v. Hocking Valley Ry. Co., 194 Fed. 234, and same question Sunday Creek Co. v. United States, 210 Fed. 747, 127 C. C. A. 285. Violators to pay bonus for erecting plant at particular place. U. S. v. Union Stock & Transit Co., 226 U. S. 286, 57 L. Ed. 226, 33 Sup. Ct. 83, modifying same styled case, 192 Fed. 330, Opin. Com. Ct. No. 15, p. 189. Allowance "for transfer" does not violate. American Sugar Refining Co. v. Delaware, L. & W. R. Co., 207 Fed. 733, 125 C. C. A. 251, reversing same styled case, 200 Fed. 652. Rebate from published tariff for haul from mine violates. Mitchell Coal & Coke Co. v. Penn. R. Co., 230 U. S. 247, 57 L. Ed. 1472, 33 Sup. Ct. 916, modifying judg-

ment in same styled case, 183 Fed. 908. Forwarding agent a person within meaning of Section. Int. Com. Com. v. D. L. & W. Ry. Co., 220 U. S. 235, 55 L. Ed. 448, 31 Sup. Ct. 392. Section referred to in its application to the long and short haul clause. U. S. v. A. T. & S. F. Ry. Co., Inter-mountain case. 234 U. S. 476, 58 L. Ed. 1408, 34 Sup. Ct. 986, reversing the Com. Ct. in A. T. & S. F. Ry. Co. v. U. S., 191 Fed. 856, Opin. Com. Court Nos. 50, 51, p. 229 and sustaining the Commission in Railroad Com. of Nevada v. So. Pac. Co., 21 I. C. C. 329, Spokane v. N. Pac. Ry. Co., 21 I. C. C. 400. Section 2 and 3 contrasted. Curry & Whyte v. D. & I. R. R. Co., 32 I. C. C. 162, 168. Section not violated by exacting same rate on cotton packed to a different density. American Round Bale Press Co. v. A. T. & S. F. R. Co., 32 I. C. C. 458, 462.

**Notes of Decisions Rendered Since 1915.**

Requirements as to shipping containers not shown here to be unlawful. Reynolds Tob. Co. v. So. Ry. Co., 39 I. C. C. 371. Different rates in tanks and barrels not unlawful. Hubinger Bros. Co. v. A. T. & S. F. Ry. Co., 39 I. C. C. 672, but see Rice v. L. & N. R. Co., 1 I. C. C. 503, 1 I. C. R. 354, 376, 443, 722. Benefits incidental to a shipper's location adjacent to a station are not unlawful. St. Louis, Mo. Terminal Regulations, 40 I. C. C. 425. Rule penalizing users of commutation tickets who violated the terms thereof unlawful. New York Commutation Fares. 42 I. C. C. 354. Difference in conditions in Norfolk and Richmond justify different switching practices. Richmond Chamber of Commerce v. S. A. L. R. Co., 44 I. C. C. 455; Seaboard A. L. R. Co. v. United States, 249 Fed. 368. Free lease of factory site unlawful. Central of Ga. R. Co. v. Blount, 238 Fed. 292. That the carriers may violate the anti-trust laws is immaterial when considering a violation of this section. Manufacturers R. Co. v. United States, 246 U. S. 457, 62 L. Ed. 831, 38 Sup. Ct. 383.

§ 346. **Undue and Unreasonable Preference Prohibited.**—That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or un-

reasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular descripton of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

First paragraph of section 3 of the original Act, unchanged by Transportation Act 1920.

This provision substantially follows language in section two of English Traffic Act of 1854, and section eleven of the Act of 1873. The English Act provides:

Every railway Company, canal company, and railway and canal company, shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles; and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company and canal company, and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication, or which have the terminus, station, or wharf of the one near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways

and canals of the several companies, be at all times afforded to the public in that behalf.

Browne & Theobald's Railway Laws, 405, Halsbury's Laws of England, Vol. 4, p. 76.

Religious teachers in view of section 2 of Act may receive special reduced rates. Re Religious Teachers, 1 I. C. C. 21. Discount may not be given large shippers. Providence Coal Co. v Providence, etc., R. Co., 1 I. C. C. 107, 1 I. C. R. 316, 363. A carrier operating parallel lines should furnish corresponding advantages to each line. Boards of Trade Union v. Chicago, etc., R. Co., 1 I. C. C. 215, 1 I. C. R. 608. Undue preference illegal although not wholly voluntary. Raymond v. Chicago, M. & St. P. R. Co., 1 I. C. C. 230, 1 I. C. R. 627. Unreasonable preference illegal whether accomplished by device or directly. Scofield v. Lake, etc., R. Co., 2 I. C. C. 90, I. C. C. 193, 3 I. C. R. 841, 6 I. C. C. 455. Discrimination is legal reason to affect rates favorably to subscribing territory. Lincoln Board of Trade v. U. P. R. Co., 2 I. C. C. 147, 2 I. C. R. 95. Uniform rate on milk from all stations within two hundred miles of New York not unjust discrimination. Howell v. New York, etc., R. Co., 2 I. C. C. 272, 2 I. C. R. 162. Rule discussed for making rates between communities in accord with section. Detroit Board of Trade v. Grand Trunk Ry., 2 I. C. C. 315, 2 I. C. R. 199. Rates should be known and announced publicly as to all places and persons. Re Tariffs Transcontinental Lines, 2 I. C. C. 324, 2 I. C. R. 203. Rate per ton mile may vary with distance. New Orleans Cotton Exchange v. Cincinnati, etc., R. Co., 2 I. C. C. 375, 2 I. C. R. 289; Same v. Ill. Cent. R. Co., 3 I. C. C. 534, 2 I C. R. 777. Circumstances may be so different as to justify deviations from rule of equal mileage on different branches of the same road, but burden to show such circumstances on the carrier. Logan v. Chicago & N. W. R. Co., 2 I. C. C. 604, 2 I. C. R. 431. Through rates not required to be made on a mileage basis. McMorran v. Grand Trunk R. Co., 3 I. C. C. 252, 2 I. C. R. 604. Separation of races legal but accommodations must be equal. Heard v. Ga. R. Co., 3 I. C. C. 111, 2 I. C. R. 508; see same case, 1 I. C. C. 428, 1 I. C. R. 719; Cozart v. So. Ry. Co., 16 I. C. C. 226; Gaines v. Seaboard A. L. Ry., 16 I. C. C. 471. May make a reasonable

difference between C. L. and L. C. L. shipments. Car load ratings should be equal, whether one or more consignors or consignees. Thurber v. New York, etc., R. Co., 3 I. C. C. 473, 2 I. C. R. 742. Special tariffs for emigrants only illegal. Elvey v. Ill. Cent. R. Co., 3 I. C. C. 652, 2 I. C. R. 804. Should be no distinction between the rates and allowances on oil shipped in tank cars and in barrels. Rice v. Western N. Y. etc., R. Co., 4 I. C. C. 131, 3 I. C. R. 162; see also 5 I. C. C. 193, 3 I. C. R. 841, 6 I. C. C. 455. Discrimination is not legalized because investments have been made under it. Board of Trade of Chicago v. Chicago & Alton R. Co., 4 I. C. C. 158, 3 I. C. R. 233. Mere quantity, other than a recognized unit of carriage, no reason for difference in rate. Harvard v. Penn. Co., 4 I. C. C. 212, 3 I. C. R. 257. A differential between wheat and wheat flour long maintained may be continued. Kauffman v. Mo. Pac. R. Co., 4 I. C. C. 417, 3 I. C. R. 400. Rates should be relatively just both as to localities and different kinds of traffic. Squire v. Mich. Cent. R. Co., 4 I. C. C. 611, 3 I. C. R. 515. Water competition when freight can move over the longer distance point justifies a less rate for the longer than the shorter haul. James & Mayer Buggy Co. v. Cincinnati, etc., R. Co., 4 I. C. C. 744, 3 I. C. R. 682. Order not enforced. Int. Com. Com. v. Cincinnati, etc., R. Co., 56 Fed. 925. Circuit court reversed. 13 U. S. App. 720, 162 U. S. 184, 40 L. Ed. 935., 16 Sup. Ct. 700. Section compared with English act. Railroad Com. of Ga. Trammel et al. v. Clyde S. S. Co., 5 I. C. C. 324, 4 I. C. R. 120, 140. Order not enforced. Int. Com. Com. v. Western & A. R. Co., 88 Fed. 186, 93 Fed. 83, 35 C. C. A. 226, 181 U. S. 29, 45 L. Ed. 729, 21 Sup. Ct. 512. Rates on similar commodities should not greatly differ. Michigan Box Co. v. Flint, etc., R. Co., 6 I. C. C. 335. "Unreasonable," "unjust" and similar terms used in section defined. Daniels v. Chicago etc., R. Co., 6 I. C. C. 458. Excess of manufacturing cost at one point over another should not affect the relative rates. Colorado Fuel & Iron Co. v. So. Pac. Co., 6 I. C. C. 488. Order not enforced. So. Pac. Co. v. Fuel Co., 101 Fed. 779, 42 C. C. A. 12. Terms used in section discussed and held to imply comparison. Page v. Delaware, etc., R. Co., 6 I. C. C. 548; see 6 I. C. C. 148, 4 I. C. R. 425; Int. Com. Com. v. Delaware, etc., R. Co. 64 Fed.

723. Rates from Texas common points to Wichita higher than to Kansas City illegal. Johnston-Larimer Dry Goods Co. v. A. T. & S. F. R. Co., 6 I. C. C. 568; see also 10 I. C. C. 460, 12 I. C. C. 47, 188. Should not disregard distances and natural advantages. Commercial Club of Omaha v. Chicago & R. I. R. Co., 6 I. C. C. 647. Blanket rate to New York on milk from towns of different distances held violative of this section though group rates based on groups reasonably arranged legal. Milk Producers Protective Asso. v. Delaware, etc., R. Co., 7 I. C. C. 92, 164 and cases cited. "A city is entitled to the benefit of its location." Freight Bureau of Cincinnati v. C. N. O. & T. P. R. Co., 7 I. C. C. 180, 189. The law permits railroads to meet, not to extinguish, water competition. Brewer v. L. & N. R. Co., 7 I. C. C. 224. Order not enforced. 84 Fed. 258. Undue preference means preference that is appreciable and certain. Contract for rates not enforced. Commercial Club of Omaha v. Chicago & N. W. R. Co., 7 I. C. C. 386; see also Rhinelander Paper Co. v. N. Pac. R. Co., 13 I. C. C. 633. Higher rates from New Orleans to La Grange than to points similar in size and beyond La Grange illegal. Callaway v. L. & N. R. Co., 7 I. C. C. 431. Order enforced by Circuit Court, 102 Fed. 709. Reversed in Supreme Court. Int. Com. Com. v. L. & N. R. Co. (La Grange Case) 190 U. S. 273, 42 L. Ed. 1047, 23 Sup. Ct. 687. Differential held illegal. Chamber of Commerce of Milwaukee v. Chicago, M. & St. P. R. Co., 7 I. C. C. 481, 511. Terminal charges constituting a violation of section. Cattle Raisers' Asso. v. Ft. W. & D. City R. Co., 7 I. C. C. 555-a. Order not enforced. 98 Fed. 173, 103 Fed. 249, 43 C. C. A. 209, 186 U. S. 320, 46 L. Ed. 1182, 22 Sup. Ct. 824. Differentials to Baltimore and Philadelphia under New York legal. New York Produce Ex. v. B. & O. R. Co., 7 I. C. C. 612, 658, 661, 667. Whether or not competition is such as to relieve carriers from restraints of section a question of fact. Phillips, Bailey & Co. v. L. & N. R. Co., 8 I. C. C. 93. Discrimination held to violate section. Re Alleged Violations by St. L. & S. F. Ry. Co., 8 I. C. C. 290. May be a differential between corn and wheat and their products but must be reasonable. Board of R. R. Comr's. of Kansas v. A. T. & S. F. Ry. Co., 8 I. C. C. 304; Mayor, etc., of Wichita

v. Mo. Pac. R. Co., 10 I. C. C. 35, and cases there cited. A station in Chicago, a shorter distance point should not have a higher rate than the union depot in Chicago. Chicago Fire Proof, etc., Co. v. Chicago & N. W. R. Co., 8 I. C. C. 316. Carriers have no right to create new markets at expense of old ones. Savannah Bureau etc. v. L. & N. R. Co., 8 I. C. C. 377. Order enforced. Int. Com. Com. v. L. & N. R. Co., 118 Fed. 613. Relative rates between Danville and Lynchburg illegal. Danville v. So. Ry. Co., 8 I. C. C. 409. Order not enforced. Int. Com. Com. v. So. Ry. Co., 117 Fed. 741, 122 Fed. 800, 60 C. C. A. 540. Rates must not destroy competition between cities. Board of Trade of Hampton v. N. C. & St. L. R. Co., 8 I. C. C. 503. Order not enforced. Int. Com. Com. v. N. C. & St. L. R. Co., 120 Fed. 934. Unjust discrimination illegal although no direct injury. Kindel v. A. T. & S. F. Ry. Co., 8 I. C. C. 608, 9 I. C. C. 606. Remedy for unlawful rates inadequate. McGrew v. M. P. R. Co., 8 I. C. C. 630. Rates violative of section. Hilton Lumber Co. v. Wilmington, etc., R. Co., 9 I. C. C. 17. Carriers may recognize natural, but ordinarily must not create artificial advantages. Holdzkom v. Mich. Cent. Ry. Co., 9 I. C. C. 42, 54. Preference to be illegal must be the result of action of carriers. Wilmington Tariff Asso. v. Cincinnati, Portsmouth, etc., R. Co., 9 I. C. C. 118, 157. Order not enforced. 124 Fed. 624. Illegal discrimination in failure to publish through rates. Johnson v. Chicago, Saint Paul, etc., R. Co., 9 I. C. C. 221. Milling in transit a privilege that the carriers cannot be forced to give. Diamond Mills Co. v. Boston & M. R. Co., 9 I. C. C. 311. Differentials between C. L. and L. C. L. must be reasonable. Business Men's League of St. Louis v. A. T. & S. F. R. Co., 9 I. C. C. 318, 359. Facts constituting discrimination. Mayor, etc., of Wichita v. A. T. & S. F. R. Co., 9 I. C. C. 534; Same v. Chicago & R. I. R. Co., 9 I. C. C. 569. Rates unduly discriminatory. Marten v. L. & N. R. Co., 9 I. C. C. 581; Kindel v. A. T. & S. F. R. Co., 9 I. C. C. 606. Higher charge on coal because of method of loading illegal. Glade Coal Co. v. B. & O. R. Co., 10 I. C. C. 226. Circumstances justifying different charges. Aberdeen Group Commercial Asso. v. M. & O. R. Co., 10 I. C. C. 289. Should not make a different

rate per hundred on cattle in car lots and in ten car lots. New Orleans Live Stock Ex. v. T. & P. Ry. Co., 10 I. C. C. 327. Difference in rate greater than competitive conditions justified. Gardner v. So. Ry. Co., 10 I. C. C. 342. No reasons to charge more on live stock than on live stock products. Chicago Live Stock Ex. v. Chicago Great W. R. Co., 10 I. C. C. 428. Circuit court *contra.* Int Com. Com. v. Chicago Great W. R. Co., 141 Fed. 1003, 209 U. S. 108, 52 L. Ed. 705, 28 Sup. Ct. 493. Differentials between two cities should not be affected by point of origin. Mershon v. Cent. R. R. of N. J., 10 I. C. C. 456. Higher rate to Wichita than the longer distance to Kansas City justified, but differentials too great. Lehman-Higginson Grocery Co. v. A. T. & S. F. R. Co., 10 I. C. C. 460. Should be no higher rates on shingles than lumber. Duluth Shingle Co. v. Duluth, etc., R. Co., 10 I. C. C. 489. Refusal to grant divisions to "tap lines" east of the Mississippi River not illegal because granted by other carriers west of the river. Central Yellow Pine Asso. v. Ill. Cent. R. Co., 10 I. C. C. 505. Order enforced. Ill. Cent. R. Co. v. Int. Com. Com., 206 U. S. 441, 51 L. Ed. 1128, 27 Sup. Ct. 700. Combination rate should not be less than the straight rate. Cannon Falls, etc., Elevator Co. v. Chicago Great W. R. Co., 10 I. C. C. 650. Reasonable differentials between Baltimore, Philadelphia and New York. Re Differential Freight Rates to and from North Atlantic Ports, 11 I. C. C. 13. Carrier not liable for discrimination caused by state commission. Re Freight Rates Between Memphis and Points in Arkansas. 11 I. C. C. 180. Differentials between corn and corn products fixed. Re Rates on Corn and Corn Products, 11 I. C. C. 212, 220, 227. Unjust discrimination. City Gas Co. of Norfolk v. B. & O. R. Co., 11 I. C. C. 371. Rates not unduly prejudicial. Griffin Grocery Co. v. So. Ry. Co., 11 I. C. C. 522. Flour in barrels and in sacks should have a uniformly just rate relation. Cannon v. M. & O. R. Co., 11 I. C. C. 537. Junk should not be rated as high as machinery. National Machinery & Wrecking Co. v. Pittsburg, etc., R. Co., 11 I. C. C. 581. Different rates in reverse directions not necessarily unreasonable. Weil v. Penn. R. Co., 11 I. C. C. 627. Duncan v. A. T. & S. F. R. Co., 6 I. C. C. 85, 4 I. C. R. 385; MacLoon v. Boston & M. R. Co., 9 I. C. C. 642; Hewins v. New York, N.

H. & H. R. Co., 10 I. C. C. 221; Philips v. Grand Trunk W. R. Co., 11 I. C. C. 659; see also decision by Judge Speer, Int. Com. Com. v. L. & N. R. Co., 118 Fed. 613, 623. Adjustment of rates held unreasonable. Davenport v. So. Ry. Co., 11 I. C. C. 650. Difference in cost of manufacture no ground in itself for adjustment of rates. Phillips v. Grand Trunk W. Ry. Co., 11 I. C. C. 659. Not undue discrimination. Village of Goodhue v. Chicago Great W. Ry. Co., 11 I. C. C. 683, 687. A different charge by a carrier for transporting freight originating on its own line than for that received from connecting lines illegal. Blackwell Milling & Elevator Co. v. M. K. & T. R. Co., 12 I. C. C. 23; Ponca City Milling Co. v. M. K. & T. R. Co., id. 26. Differential between Wichita and Kansas City from Galveston too great. Johnston-Larimer Dry Goods Co. v. A. T. & S. F. R. Co., 12 I. C. C. 47, 188; see similar cases id, 51, 58. Carriers cannot arbitrarily fix market competition. Texas Cement Plaster Co. v. St. L. & S. F. R. Co., 12 I. C. C. 68. May make cheaper rates to Pacific Coast from New England Mills than from southeastern mills. Enterprise Mfg. Co. v. Ga. R. Co., 12 I. C. C. 130, 451; China & Japan Trading Co. v. Georgia R. Co., 12 I. C. C. 236. Rate discrimination. Tomlin-Harris Machine Co. v. L. & N. R. Co., 12 I. C. C. 133; Southern Grocery Co. v. Ga. N. R. Co., 12 I. C. C. 229. Different minimum car load on same commodity illegal. Waxelbaum v. Atlantic C. L. R. Co., 12 I. C. C. 178. Adjustment illegal. Nobles Bros. Grocery Co. v. F. W. & D. C. R. Co., 12 I. C. C. 242. Relation in rates between grain and its products long established should not be changed without good reason. Howard Mills Co. v. Mo. Pac. R. Co., 12 I. C. C. 258; see also Traffic Bureau v. Mo. Pac. R. Co., 13 I. C. C. 11. Augusta, Ga., Suburbs entitled to same rate as Augusta. Quimby v. Clyde S. S. Co., 12 I. C. C. 392. Discrimination. Banner Milling Co. v. New York Cent. etc., R. Co., 13 I. C. C. 31. Must be no unjust discrimination in distributing cars. Powhattan Coal & Coke Co. v. Norfolk & W. R. Co., 13 I. C. C. 69; Royal C. & C. Co. v. So. Ry. Co., 13 I. C. C. 440; Traer v. Chicago & A. R. Co., 13 I. C. C. 451. Right to use private cars not prohibited but such use must not cause discrimination. Ruttle v. Pere Marquette R. Co., 13 I. C. C. 179. Must not discriminate in through routes and joint rates. Merchants

Freight Bureau of Little Rock v. Midland Valley, etc., R. Co., 13 I. C. C. 243. Freight tariffs should not be obscure. Hydraulic Press Brick Co. v. St. L. & S. F. R. Co., 13 I. C. C. 342. Little reference can be given to the value of property in fixing express rates. Kindel v. Adams Exp. Co., 13 I. C. C. 475. Party rates must be open to all. Koch Secret Service v. L. & N. R. Co., 13 I. C. C. 523. Reasonable and just rates may be fixed regardless of contracts between express and railroad companies. Reynolds v. So. Ex. Co., 13 I. C. C. 536. Rate not violation of section. Randolph Lumber Co. v. Seaboard A. L. R. Co., 13 I. C. C. 601. Rates may be different on hard and soft wood timber. Burgess v. Transcontinental Freight Bureau, 13 I. C. C. 668. Terminal companies may not discriminate in facilities granted shippers. Eichenberg v. So. Pac. Co., 14 I. C. C. 250. Order not enjoined. Southern Pac. Ter. Co. v. Int. Com. Com., 166 Fed. 134. Not unjust discrimination to refuse to transport liquors C. O. D. Royal Brewing Co. v. Adams Exp. Co., 15 I. C. C. 255, 258. Shippers have a right to reach a common market without discrimination. Black Mountain Coal Land Co. v. So. Ry. Co., 15 I. C. C. 286. Competition by water may justify different carload minimum. City of Spokane v. N. Pac. R. Co., 15 I. C. C. 376. Furnishing two cars at the minimum of one when one large one cannot be furnished, known as the "two for one" rule, must be without discrimination. Indianapolis Freight Bureau v. Cleveland, C. C. & St. L. Ry. Co., 15 I. C. C. 504, 516. Carrier cannot discriminate in favor of products on its own line. Standard Lime & Stone Co. v. Cumberland Val. R. Co., 15 I. C. C. 620, 624. At common law discrimination by common carriers was illegal. Hays v. Penn. Co., 12 Fed. 309; Kinsley v. Buffalo, N. Y. & P. R. Co., 37 Fed. 181; Western Union Tel. Co. v. Call Pub. Co., 181 U. S. 92, 45 L. Ed. 765, 21 Sup. Ct. 561. Section two relates to unjust discrimination in rates, section three is broader and prohibits discrimination "in any respect whatever," United States v. Delaware, L. & W. R. Co., 40 Fed. 101, 103. Our section taken from English Traffic Acts and English cases cited showing the construction placed upon the statutes from which this section is taken. Int. Com. Com. v. B. & O. R. Co., 43 Fed. 37, 3 I. C. R. 192. Affirmed. 145 U. S. 263, 36 L. Ed. 699, 12

Sup. Ct. 844. Federal courts have jurisdiction under this section regardless of diversity of citizenship. Little Rock & M. R. Co. v. East Tenn., Va. & Ga. R. Co., 47 Fed. 771. Appeal dismissed. 159 U. S. 698, 40 L. Ed. 311, 16 Sup. Ct. 189. Does not require one road to receive cars of another when it has cars of its own in which the freight may be transported. Oregon Short Line and U. N. Ry. Co. v. N. Pac. R. Co., 51 Fed. 465. Affirmed. 61 Fed. 158, 9 C. C. A. 409. Only unjust discrimination prohibited. Int. Com. Com. v. Tex. & Pac. Ry. Co., 52 Fed. 187, citing Nicholson v. Great Western Ry. Co., 5 C. B. (N. S.) 366. Affirmed. 57 Fed. 948, 6 C. C. A. 653, 20 U. S. App. 1, 4 I. C. R. 408. Reversed on other grounds, 162 U. S. 197, 40 L. Ed. 940, 16 Sup. Ct. 666. Clause indefinite and uncertain and as whether or not undue preference exists must be left to a jury, a violation not punishable as a crime. Tozer v. United States, 52 Fed. 917; see opinion and charge of lower court United States v. Tozer, 37 Fed. 635, 2 L. R. A. 444, 39 Fed. 369, 39 Fed. 904. Not illegal to guarantee that an opera troupe shall arrive at its destination at a given time. Foster v. Cleveland, C., C. & St. L. Ry. Co., 56 Fed. 434. Carrier not required to permit a competitor to land at its wharf. Ilwaco Ry. & Nav. Co. v. Ore. Short L. and U. N. Ry. Co., 57 Fed. 673, 6 C. C. A. 495; Weems Steamboat Company v. People's Steamboat Co., 214 U. S. 345, 53 L. Ed. 1024, 29 Sup. Ct. 661. Carrier may permit use of its track to one to the exclusion of other carriers. Little Rock & M. R. Co. v. St. L., I. M. & S. Ry. Co., 59 Fed. 400. Affirmed, 63 Fed. 775, 11 C. C. A. 417, 26 L. R. A. 192. Cannot make a different charge because of origin of commodity. Bigbee, etc., Packet Co. v. Mobile & O. R. Co., 60 Fed. 545. Joint through tariff not basis for local tariff. Parsons v. Chicago & N. W. Ry. Co., 63 Fed. 903, 11 C. C. A. 489. Affirmed. 167 U. S. 447, 42 L. Ed. 231, 17 Sup. Ct. 887, holding that a shipper cannot recover a penalty for discrimination if his rate is reasonable. Giving free pass violates section. Re Charge to Grand Jury. 66 Fed. 146. If pass is used. Re Huntington, 68 Fed. 881. No defense to charge of discrimination that carrier may at will withdraw the favor to plaintiff's competitor. Butchers', etc., Stock Yards Co. v. L. & N. R. Co., 67 Fed. 35, 14 C. C. A. 290. Attention called to the fact that the words "under substantially

similar circumstances and conditions'' are not in this section. Int. Com. Com. v. Alabama M. Ry. Co., 69 Fed. 227, 231. Affirmed. 74 Fed. 715, 21 C. C. A. 51, 41 U. S. App. 453, 1 I. C. R. 685, holding that what is undue and unreasonable preference a question of fact and not of law. Affirmed. 168 U. S. 144, 42 L. Ed. 414, 18 Sup. Ct. 45, holding that a determination by the Interstate Commerce Commission that a rate violates section three is subject to review by the courts. Second and third sections compared. Int. Com. Com. v. L. & N. R. Co., 73 Fed. 409. The collection as well as the delivery of goods is subject to the rule of equal treatment. Detroit, G. H & M. Ry. Co. v. Int. Com. Com., 74 Fed. 803, 812, 21 C. C. A. 103, 43 U. S. App. 308, reversing 57 Fed. 1005, 4 I. C. R. 722. Affirmed. 167 U. S. 633, 42 L. Ed. 306, 17 Sup. Ct. 986. The ultimate power of determining whether or not there is discrimination is in the courts. Int. Com. Com. v. East Tenn., Va. & Ga. Ry. Co., 85 Fed. 107, 117. Affirmed. 99 Fed. 52, 39 C. C. A. 413. Reversed. East Tenn., Va. & Ga. Ry. Co. v. Int. Com. Com., 181 U. S. 1, 45 L. Ed. 719, 21 Sup. Ct. 516. There might be a violation of section three without a violation of section four, but the facts here do not make such a case. Int. Com. Com. v. Western & A. R. Co., 88 Fed. 186, 194. Affirmed. 93 Fed. 83, 35 C. C. A. 217. Modified so that the Commission could make an original investigation in accord with the rules of law announced. Int. Com. Com. v. Clyde S. S. Co. and Same v. Western & A. R. Co., 181 U. S. 29, 45 L. Ed. 729, 21 Sup. Ct. 512. Length of time will not make discrimination legal, and the courts are not concluded by the determination of carriers. Discrimination produced by an effective restraint of trade will not make such a different state of circumstances as to justify discriminatory rates. East Tenn., Va. & Ga. Ry. Co. v. Int. Com. Com., 99 Fed. 52, 39 C. C. A. 413. Reversed because the Commissioners and the courts did not consider all the legal principles that should have been applied. Cause dismissed without prejudice to the rights of the Commission to make further investigation according to the law as announced. East Tenn., Va. & Ga. Ry. Co. v. Int. Com. Com., 181 U. S. 1, 45 L. Ed. 719, 21 Sup. Ct. 516. Section applies to switch connections and equity may enjoin discrimination. Interstate Stock Yards Co. v. Indianapolis U. Ry. Co., 99 Fed. 472. Must

be actual not threatened discrimination. Lehigh V. R. Co. v. Rainey, 112 Fed. 487. The same evidence that will relieve from section four will disprove undue preference under section three. Int. Com. Com. v. Nashville, C. & St. L. Ry. Co., 120 Fed. 934. Carriers may meet competition without violating section. Int. Com. Com. v. Cincinnati, P. & V. R. Co., 124 Fed. 624. Whether a preference is "undue" or "unreasonable" must be determined by the circumstances of each case. The Act to Regulate Commerce was designated to promote and not to obstruct competition. A able and comprehensive discussion of the subject of rates. Int. Com. Com. v. Chicago G. W. Ry. Co., 141 Fed. 1003. Affirmed, same style case, 209 U. S. 108, 52 L. Ed. 705, 28 Sup. Ct. 493, holding that competition negatives any unlawful intent on the part of the carrier. This section requires that carriers shall not discriminate in furnishing cars to shippers. United States v. Norfolk & W. Ry. Co., 143 Fed. 266, 74 C. C. A. 386, 404, reversing 138 Fed. 849. A carrier may legally make a contract to build up and develop a particular traffic. Delaware, L. & W. R. Co. v. Kutter, 147 Fed. 51, 77 C. C. A. 315. Petition for certiorari denied. 203 U. S. 588, 51 L. Ed. 330. A charge in excess of the cost of loading hay from warehouses illegal. St. Louis Hay & Grain Co. v. Southern Ry. Co., 149 Fed. 609. Affirmed. So. Ry. Co. v. St. Louis Hay & Grain Co., 153 Fed. 728, holding that charges on through business not a basis for charges on local business. Reversed. So. Ry. Co. v. St. Louis Hay and Grain Co., 214 U. S. 297, 53 L. Ed. 100, 4 Sup. Ct. 678, holding that the carrier was entitled to a reasonable profit in excess of the actual cost. Section sufficiently broad to cover demurrage charges. Michie v. New York, N. H. & H. R. Co., 151 Fed. 694. Rule as to distribution of cars to coal companies. United States v. B. & O. R. Co., 154 Fed. 108. Reversed. 165 Fed. 113; Logan Coal Co. v. Penn. R. Co., 154 Fed. 497; Majestic Coal & Coke Co. v. Ill. Cent. R. Co., 162 Fed. 810. A carrier may grant to one the right to erect an elevator on its right-of-way and refuse such right to another. United States v. Oregon R. & Nav. Co., 159 Fed. 975. Express companies can not transport free the property of its officers or employees. United States v. Wells Fargo Ex. Co., 161 Fed. 606. Affirmed. Wells Fargo Ex. Co. v. United States, 212 U. S. 522, 53 L.

Ed. 635; 29 Sup. Ct. 315. Congress in adopting this section is presumed to have adopted the construction placed on a similar English statute by the courts of England. Int. Com. Com. v. B. & O. R. Co., 145 U. S. 263, 36 L. Ed. 699, 12 Sup. Ct. 844. Statute does not define what preference is due or undue, reasonable or unreasonable and such questions are questions not of law but of fact. Tex. & Pac. R. Co. v. Int. Com. Com., 162 U. S. 197, 219, 220, 40 L. Ed. 940, 947, 948, 16 Sup. Ct. 666.

**Notes of Decisions Rendered Since 1909.**

Water competition to the extent of its force may be regarded. Planters Gin & Compress Co. v. Y. & M. V. R. R. Co., 16 I. C. C. 131, 133 citing cases. May be violated in allowances to shippers under Sec. 15, Sec. 404, *post*. Merchants Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 105. No shipper can enjoy advantages not conceded to all in like situation. Brook-Rauch Mill & Elevator Co. v. M. P. Ry. Co., 17 I. C. C. 158, 164. Proportioned rates limited to one line violates. Bascom Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 354, 357. May not discriminate because of a contract with a particular place. Loch-Lynn Construction Co. v. B. & O. R. Co., 17 I. C. C. 396. Competition favored but undue discrimination prohibited. R. R. Com. of Tenn. v. A. A. R. Co., 17 I. C. C. 418, 421. In distribution of cars. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356 and cases cited. No different rate because of differences in marking packages. Algert Co. v. D. & R. G. R. Co., 20 I. C. C. 93. No different rate because of different use. Re Restricted Rates, 20 I. C. C. 426. Between subscribers for telephones. Shoemaker v. C. & P. Tel. Co., 20 I. C. C. 614. Meaning of undue and unreasonable discussed. R. R. Com. of Nevada, 21 I. C. C. 329, 336. Switching allowance limited to cases where the rate exceeds 50 cents a ton violates. Buffalo Union Furnace Co. v. L. S. & M. S. Ry. Co., 21 I. C. C. 620, 629. Section applies when the discriminating rate is intrastate. Railroad Com. of La. v. St. L. S. W. Ry. Co., Shreveport case, 23 I. C. C. 31, order sustained. Texas & Pac. Ry. Co. v. U. S., 205 Fed. 380, Opin. Com. Ct. No. 68, p. 655. Houston E. & W. T. Ry. Co. v. United

States, 205 Fed. 391, Opin. Com. Ct. No. 67, p. 653; Com. Ct. affirmed. Houston E. & W. Ry. Co. v. United States, 234 U. S. 342, 58 L. Ed. 1341, 34 Sup. Ct. 833. Carrier may grant exclusive right to one company to solicit baggage transfers. Cosby v. Richmond Trans. Co., 23 I. C. C. 72. Commission cannot compel an advance in rates to remove discrimination. Transportation Fresh Meats, 23 I. C. C. 652, 655. Basing-point System, Boston, Ga. v. A. C. L. R. Co., 24 I. C. C. 50. Board of Trade of Carollton v. C. of G. R. Co., 28 I. C. C. 154. Having undertaken a switching service this section requires equality. Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 189. Elevator allowances, Gund & Co. v. C. B. & Q. R. Co., 25 I. C. C. 326. Through routes must be maintained without discrimination. Wichita Falls System Joint Coal Rates, 26 I. C. C. 215, 223.

Distinguished from Sec. 2, Sec. 345 *supra*. Board of Trade of Chicago v. C. & A. R. R. Co., 27 I. C. C. 530, 534. Effect of competitive conditions discussed. Richmond Chamber of Commerce v. S. A. L. Ry. Co., 30 I. C. C. 552. Limits Sec. 15, *post*, Sec. 400, Pacific Nav. Co. v. So. Pac. Co., 31 I. C. C. 472. Applies to lease of premises to shippers. Cleveland, C. C. & St. L. Ry. Co. v. Hirsch, 204 Fed. 849, 123 C. C. A. 145. May make an allowance for transfer without violating statute. Am. Sugar Refining Co. v. Delaware, L. & W. R. Co., 207 Fed. 733, 125 C. C. A. 251, reversing same styled case, 200 Fed. 652. Discrimination in the distribution of cars for determination by Commission. Morrisdale Coal & Coke Co. v. P. R. R. Co., 230 U S. 304, 57 L. Ed. 1494, 33 Sup. Ct. 938, affirming same styled case 183 Fed. 929, 106 C. C. A. 269. Discrimination in use of Wharves for export business. So. Pac. Terminal Co. v. Int. Com. Com., 219 U. S. 498, 55 L. Ed. 310, 31 Sup. Ct. 279. Elevator allowance conditioned on reshipping in ten days legal. Int. Com. Com. v. Diffenbaugh, 222 U. S. 42, 56 L. Ed. 83, 32 Sup. Ct. 22, modifying, Peavey v. N. Pac. R. Co., 176 Fed. 409. For the Commission's decisions involved see, 176 Fed. 410. The distribution of cars within provision. Int. Com. Com. v. Ill. C. R. R. Co., 215 U. S. 452, 54 L. Ed. 280, 30 Sup. Ct. 155, reversing, Chicago & A. R. Co. v. Int. Com. Com., 173 Fed. 930 and sustaining the Commission in Traer v. Chicago & A. R. Co., 13 I. C. C. 451. See also Railroad

Com. of Ohio v. H. V. Ry. Co., 12 I. C. C. 398. Special expedited service not open to all illegal. C. & A. R. Co. v. Kirby, 225 U. S. 155, 56 L. Ed. 1033, 32 Sup. Ct. 648, reversing, Kirby v. C. & A. R. Co., 241 Ill. 418, 90 N. E. 252. Conditions impossible of performance because of rule of carrier cannot be imposed on the payment of elevator allowances. Union P. R. Co. v. Updike Grain Co., 222 U. S. 215, 56 L. Ed. 171, 32 Sup. Ct. 39, affirming same styled case, 178 Fed. 223, 101 C. C. A. 583. Ownership of goods cannot be considered. Int. Com. Com. v. D. L. & W. R. Co., 220 U. S. 235, 55 L. Ed. 448, 31 Sup. Ct. 392, reversing same styled case 166 Fed. 499. State made rates, see Shreveport case *supra*. Construed with Fourth Section U. S. v. A. T. & S. F. Ry. Co., Inter-mountain case 234 U. S. 476, 58 L. Ed. 1408, 34 Sup. Ct. 986, reversing, 191 Fed. 856, Op. Com. Ct. Nos. 50, 51, p. 229. "Tap lines" not illegal. Tap line cases, 234 U. S. 1, 58 L. Ed. 1185, 34 Sup. Ct. 741, 31 I. C. C. 490, 34 I. C. C. 116, 35 I. C. C. 458, Industrial Railways case, 29 I. C. C. 212. Second Industrial Railways case 34 I. C. C. 596. Cars must be forwarded without discrimination. Vulcan Coal & Mining Co. v. I. C. R. Co., 33 I. C. C. 52. A railroad not directly serving a locality nor a party to joint or through rates thereto cannot be guilty of unjust discrimination against such locality. St. Louis I. M. & S. Ry. Co. v. United States, 217 Fed. 80, enjoining the order of the Commission in Metropolis Commercial Club v. Ill. C. R. Co., 30 I. C. C. 40. See also, So. Ry. Co. v. United States, 205 Fed. 465. "A just equality of opportunity for shipper and locality is required by law." Kaufman Commercial Club v. T. & N. O. R. Co., 31 I. C. C. 167, 171. Different proportional rates dependent on point of origin are not necessarily unlawful. Export Rates on Grain and Grain Products, 31 I. C. C. 616, and cases cited. Compare. Augusta S. R. Co. v. Wrightsville & T. R. Co., 74 Fed. 522 and New Orleans Board of Trade v. Ill. C. R. Co., 23 I. C. C. 465. Blanket rates not necessarily illegal, but are under some circumstances and upon a sufficiently comprehensive investigation the Yellow Pine Blanket might be changed. Wisconsin and Arkansas Lumber Co. v. St. L. I. M. & S. Ry. Co., 33 I. C. C. 33.

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Lawful to have one auctioneer to sell fruits at produce yards. Andrews Bros. Co. v. P. R. Co., 38 I. C. C. 165. Brokers who receive shipments from Canada and forward them to points in the United States are protected by this section against unjust discrimination. Emery & Co., v. B. & M. R. Co., 47 I. C. C. 200. Nothing unlawful found in rules relating to compressing cotton. Cotton Concentration at Weeleetka, Okla. 39 I. C. C. 181. Effect of intervention in rate schedules of lines other than those directly serving complaining point. Henderson Cotton Mills v. L. & N. R. Co., 39 I. C. C. 399, 405 and cases cited; Chamber of Commerce Johnston City v. Sou. Ry. Co., 46 I. C. C. 527. An unjustly discriminatory system of rates. Missouri River—Nebraska Cases, 40 I. C. C. 201. Localities as well as passengers and shippers may successfully complain. Public Service Com. of Wash. v. A. & V. Ry. Co., 42 I. C. C. 54, 63. Combination rates on grain contrasted with through rates on the products. Eldred Milling Co. v. C. N. R. Co., 42 I. C. C. 215, 219 and cases cited. Proportional rates must be accorded without unjust discrimination. Traffic Bureau of Toledo v. C. H. & D. Ry. Co., 43 I. C. C. 466. As to drayage absorptions. Dryage Absorptions 43 I. C. C. 472. As to carload minima. Northern Potato Traffic Asso. v. B. & O. R. Co., 43 I. C. C. 545. Grant of trackage rights to another railroad may exclude grantee from participating in local traffic on the granted line tracks. Hocking Domestic Coal Co. v. K. & M. Ry. Co., 44 I. C. C. 392, 400. As to notice of embargoes. Baltimore Chamber of Commerce v. B. & O. R. Co., 45 I. C. C. 40. Not unjust discrimination when the discrimination operates "in the interest of the public as a whole." Swaney v. B. & O. R. Co., 49 I. C. C. 345. Carriers may establish eating houses. Montgomery v. C. B. & Q. R. Co., 228 Fed. 616. Section considered in a proceeding to enjoin laborers from combining to do an unlawful thing. Alaska S. S. Co. v. International Longshoreman's Asso., 236 Fed. 964, 971. Discrimination in divisions comdemned. Chestnut Ridge Ry. Co. v. United States, 248 Fed. 791. Discrimination between producing mines complained of by a consuming market not under the admitted

facts unlawful. Philadelphia & R. R. Co. v. United States, 240 U. S. 334, 60 L. Ed. 675, 36 Sup. Ct. 354. Terminals open to one but not to another road not unlawful under facts found. Louisville & N. R. Co., v. United States, 242 U. S. 60, 61 L. Ed. 152, 37 Sup. Ct. 61.

§ 346A. **Regulation of Collection of Transportation Charges.** —From and after July 1, 1920, no carrier by railroad subject to the provisions of this Act shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to assure prompt payment of all such rates and charges and to prevent unjust discrimination: Provided, That the provisions of this paragraph shall not be contrued to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau or agency thereof, or for any State or Territory or political subdivision thereof, or for the District of Columbia."

Paragraph 2, of section 3 Interstate Commerce Act added by Transportation Act 1920.

Carriers always have had a lien for charges and could not be compelled to make delivery until such charges were paid; having delivered the commodity, only a person liable for the charges could be made to pay. It has always been the right and duty of carriers to collect the correct tariff rate. Pittsburgh, C. C. & St. L. Ry. Co., v. Fink, 250 U. S. 577, 63 L. Ed. 1151, 39 Sup. Ct. —.

Recoupment for damages not allowed in suits for freight charges. Illinois C. R. Co., v. Hopper & Sons, 233 Fed. 135; Johnson Brown Co. v. S. L. & W. R. Co., 239 Fed. 590. *Contra* Wells Fargo & Co. v. Cuneo, 241 Fed. 727, 730. Chicago & N. W. Ry. Co. v. Tecktonius Mfg. Co. 262 Fed. 715.

This statute probably makes the consignee liable for freight charges in all cases in which he accepts the goods, at least he can not get his goods until all tariff rates have been paid or secured in such way as the Commission may hereafter prescribe.

See section cited and discussed. Payment of Freight Charges, 57 I. C. C. 571.

§ 347 **Carriers shall Accord Reasonable and Equal Facilities for Interchange of Traffic.**—All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.

Paragraph 3 of section 3 Interstate Commerce Act as amended by Transportation Act 1920, section 405. The former section read:

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therwith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Paragraph two of section three as originally enacted.

A private stock car company is not a connecting line within meaning of section. Burton Stock Car Co. v. Chicago & Burlington R. Co., 1 I. C. C. 132, 1 I. C. R. 329. Commission may not compel agents of one road to sell tickets over another. Chicago & Alton R. Co. v. Penn. R. Co., 1 I. C. C. 86, 1 I. C. R. 357. A bridge company having the powers of a common carrier bound by section. Kentucky, etc., Bridge Co. v. L. & N. R. Co., 2 I. C. C. 162, 2 I. C. R. 102. Order not enforced. 37 Fed. 567. Carriers may make through routes and joint rates with some river boats and refuse to do so with others. Capehart v. L. & N. R. Co., 4 I. C. C. 265, 3 I. C.

R. 278. A carrier can not refuse to interchange traffic with another carrier because that other is interested in a competing line. New York & N. Ry. Co. v. New York & N. E. R. Co., 4 I. C. C. 702, 3 I. C. R. 542. Suit to enforce order not dismissed. 50 Fed. 867. Section construed and held not to give Commission power to order loaded cars delivered to a connecting carrier. R. R. Com. of Ky. v. L. & N. R. Co., 10 I. C. C. 173, 187. To enforce through routes and joint rates on behalf of connecting carriers is not to take the use of terminal facilities. Cardiff Coal Co. v. Chicago, M. & St. P. R. Co., 13 I. C. C. 460. This statute a shippers provision and indicates the "open gateway policy" of the Act. Rahway Valley R. Co. v. Delaware, L. & W. R. Co., 14 I. C. C. 191, 194. Sections quoted. Enterprise Fuel Co. v. Penn. R. Co., 16 I. C. C. 218, 221. Does not require the forming of new connections or establishment of new stations. Kentucky & I. Bridge Co. v. L. & N. R. Co., 37 Fed. 567, 621, 630. Courts can not compel a through route and joint rate. Little Rock, etc., R. Co. v. St. Louis, etc., R. Co., 41 Fed. 559. A carrier may perfer it own line to that of a rival. Little Rock, etc. R. Co. v. East Tenn., Va. & Ga. R. Co., 47 Fed. 771. Must not only receive freight from a connection but must also grant reasonable and equal facilities for such connection. New York & N. Ry. Co. v. New York & N. E. R. Co., 50 Fed. 867, 870. A railroad is not required to take a connecting carrier's cars when it can transport the freight in its own cars. Oregon Short Line, etc., Ry. Co. v. N. Pac. R. Co., 51 Fed. 465. Affirmed. 61 Fed. 158, 9 C. C. A. 409. May enjoin a conspiracy to refuse to make connections. Toledo, etc., R. Co. v. Penn. Co., 54 Fed. 730, 746, 17 L. R. A. 387, 5 I. C. R. 545, 22 U. S. App. 561; Ex parte Lennon, 64 Fed. 320, 22 U. S. App. 561, 166 U. S. 548, 41 L. Ed. 1110, 17 Sup. Ct. 658. Not required to permit boats of a competitor to land at wharf. Ilwaco Ry. Co. & Nav. Co. v. Oregon Short Line, etc., Ry. Co., 57 Fed. 673, 6 C. C. A. 495, reversing 51 Fed. 611 Nor to permit use of its own tracks. Little Rock, etc., R. Co. v. St. Louis, I. M. & S. Ry. Co., 59 Fed. 400. Affirmed. 63 Fed. 775, 11 C. C. A. 417, 26 L. R. A. 192. Common carrier may make

an exclusive contract with a drayage company. St. Louis Drayage Co. v. L. & N. R. Co., 65 Fed. 39. Or with another carrier. Prescott & A. C. R. Co. v. A. T. & S. F. R. Co., 73 Fed. 438. Can not charge more to transmit freight received from one carrier than from another. Augusta S. R. Co. v. Wrightsville & T. R. Co., 74 Fed. 522. Carrier may demand prepayment of freight from one connecting carrier and not from another. Gulf, etc., R. Co. v. Miami S. S. Co., 86 Fed. 407, 30 C. C. A. 142; Southern Ind. Exp. Co. v. United States Exp. Co., 88 Fed. 659. It is the duty of a common carrier to furnish reasonable facilities for unloading and caring for live stock, to do this by contracting with one person to the exclusion of others does not violate this section. Central Stock Yards Co. v. L. & N. R. Co., 118 Fed. 113, 117, 118, 55 C. C. A. 63, citing A. T. & S. F. R. Co. v. Denver & N. O. R. Co., 110 U. S. 667, 28 L. Ed. 291, 4 Sup. Ct. 185; Express Cases, Memphis & L. R. R. Co. v. So. Express Co., 117 U. S. 1, 29 L. Ed. 791, 6 Sup. Ct. 542; Pullman Palace Car Co. v. Mo. Pac. R. Co., 115 U. S. 587, 29 L. Ed. 499, 6 Sup Ct. 194; Pac. R. Co., v. Washington ex rel. Dustin, 142 U. S. 492, 35 L. Ed. 1092, 12 Sup Ct. 283. The case and the doctrine of Central Stock Yards, Co. v. L. & N. R. Co., 118 Fed. 113, 55 C. C. A. 63, affirmed. Same case, 192 U. S. 568, 48 L. Ed. 565, 24 Sup. Ct. 339. Also assuming, without deciding, that injunction the proper remedy against discrimination, at p. 570. Duties of carrier to furnish facilities to shipper discussed at length with reference to furnishing cars to ship coal. United States v. B. & O. R. Co., 165 Fed. 113.

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Purpose of this and cognate sections is that every shipping point shall be connected with every other shipping point. Enterprise Fuel Co. v. P. R. R. Co., 16 I. C. C. 219, 221. "Give the use of tracks and terminal facilities" discussed. Merchants & Manufacturers Ass'n v. P. R. R. Co., 23 I. C. C. 474, 476. Construed with Section 1 *Ante* Section 338, and Sec. 15 *post* 400. Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 185; Railroad Com. of Ark. v. St. L. I. M.

& S. Ry. Co., 24 I. C. C. 293, 295; St. L. S. & P. R. R. Co. v. P. & P. U. R. Co., 26 I. C. C. 226, 234. Effect given by Commission to words " Give the use of tracks," etc. Morris Iron Co. v. B. & O. R. R. Co., 26 I. C. C. 240, 244; B. R. & P. R. Ry. Co. v. P. R. Co., 29 I. C. C. 114, 118; Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 690; Pacific Nav. Co. v. So. Pac. Co.. 31 I. C. C. 472, 480. When a carrier switches to one connecting carrier to require like switching to another connecting carrier does not take the use of tracks contrary to the provisions of the Section. Penn. Co. v. U. S., 236 U. S. 351, 59 L. Ed. 616, 35 Sup. Ct. 370.

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Railroads should be one national system. Louisville B. of Trade v. L. & N. R. Co., 40 I. C. C. 679, 689. Limitations of former setion applied. Iowa & S. W. Ry. Co. v. C. B. & Q. R. Co., 42 I. C. C. 389. Denial of use of team tracks criticised. Tulsa Traffic Asso. v. St. Louis, S. F. Ry. Co., 49 I. C. C. 644, 647. Patented articles given less consideration than a non patented articile. Pneumatic Scales Corp. v. A. & R. R. Co. 51 I. C. C. 686. Rehearing pending. Some hackmen may be excluded from depots and others admitted. Skaggs v. K. C. Ter. Ry. Co., 233 Fed. 827. Two joints owners of terminal switching tracks may exclude a third railroad from using such tracks. Louisville & N. R. Co. v. United States, 242 U. S. 60; 61 L. Ed. 153, 37 Sup Ct. 61. Compare United States v. Louisville & N. R. Co., 235 U. S. 314, 59 L. Ed. 245, 35 Sup. Ct. 113; Penn. Co. v. United States, 236 U. S. 351, 59 L. Ed. 616, 35 Sup. Ct. 370, P. U. R. 1915 B 261; Louisville & N. R. Co. v. United States, 238 U. S. 1, 59 L. Ed. 1177, 35 Sup. Ct. 696. Mr. Justice Holmes said the 238 U. S. 1, 19 case "grazed but did (not) hit" the 242 U. S. 60 Case.

§ 347A. **Joint Use of Terminal Facilities May be Required.** —If the Commission finds it to be in the public interest and to be pacticable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including

main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirements or just compensation for such use or both as the case may be.

Paragraph 4 of section 3 of Interstate Commerce Act added by section 405 of Transportation Act 1920. See section 344f, *supra*.

§ 348. **Rule as to Long and Short Hauls.**—That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this Act, but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a long distance.

Part of paragraph 1, section 4 of Interstate Commerce Act as amended by Transportation Act 1920, section 406. The former section read:

That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater

compensation in the aggregate for the transportation of passengers, or like kind og property, for a shorter than for a longer distance over the same line or route in the same direction,, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this Act; but this hall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance.

Section 4 of the Act as amended by the Act of June 18, 1910. The section as originally passed and as it remained until the amendment of 1910 read: That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: Provided, however, That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

Notes to old section.

The English Railway and Traffic Act of 1888, section 27, gave the commissioners power to direct that no greater charge should be made for a shorter than a longer haul when the circumstances demanded such direction. Halsbury's Laws of England, vol. 4, p. 81.

"Under substantially similar circumstances" defined and circumstances that relieve from the section discussed. Re Southern Ry. & Steamship Co. and Petition of L. & N. R.

Co., 1 I. C. C. 15, 17, 31, 76, 278, 1 I. C. R. 31. Section not to be construed without a formal petition. Re So. Pac. R. Co., 1 I. C. R. 16. Where several roads join in a tariff for the longer, and a less number in that for the shorter haul, the act applies. Boston & A. R. Co. v. Boston & L. R. Co., 1 I. C. C. 158, 1 I. C. R. 400, 408, 500, 571. Carrier competition may be met even though the longer through haul is less than the charge over the shorter haul. Allen v. Louisville, New Albany, etc., R. Co., 1 I. C. C. 199, 1 I. C. R. 621. Must be actual competition of controlling force. Harwell v. Columbus & W. R. Co., 1 I. C. C. 236, 1 I. C. R. 631; San Bernardino Board of Trade v. A. T. & S. F. R. Co., 4 I. C. C. 104, 3 I. C. R. 138. Order not enforced. Int. Com. Com. v. A. T. & S. F. R. Co., 50 Fed. 295. May violate section by a different classification for shorter haul. Martin v. So. Pac. Co., 2 I. C. C. 1, 2 I. C. R. 1. Burden on carrier to show different circumstances. Spartanburg Board of Trade v. Richmond & D. R. Co., 2 I. C. C. 304, 2 I. C. R. 193. Validity of the charge determined not by porportions but by the rate as an entirety. Imperial Coal Co. v. Pittsburg & L. E. R. Co., 2 I. C. C. 618, 2 I. C. R. 436. Principles given showing application of section to tariffs and classification in southern states. Re Atlanta & W. P. R. Co., 3 I. C. C. 19, 46, 2 I. C. R. 461. Free cartage at the longer and not at the shorter may constitute a violation of section. Stone v. Detroit, etc., R. Co., 3 I. C. C. 613, 3 I. C. R. 60. Blanket rate legal when forced by competition. Rice v. A. T. & S. F. R. Co., 4 I. C. C. 228, 3 I. C. R. 263. Rate legal because of competition. King v. New York, N. H. & H. R. Co., 4 I. C. C. 251, 3 I. C. R. 272. Basing point rate plus the local not approved. Hamilton & Brown v. Chattanooga, R. & C. R. Co., 4 I. C. C. 686, 3 I. C. R. 482. Local carrier participating in interstate haul cannot escape the provisions of this section. James & Mayer Buggy Co. v. Cincinnati, N. O. & T. P. R. Co., 4 I. C. C. 774, 3 I. C. C. 682. Order not enforced by circuit court. Int. Com. Com. v. C. N. O. & T. P. R. Co., 56 Fed. 925. Circuit court reversed 162 U. S. 184, 40 L. Ed. 935, 16 Sup. Ct 700. No reason for greater charge for shorter haul. Perry v. Florida Cent. & P. R. Co., 5 I. C. C. 97, 3 I. C. R. 740, Section

intended to maintain, not destroy, advantages of location. Raworth v. N. Pac. R. Co., 5 I. C. C. 234, 3 I. C. R. 857. Carriers may not determine for themselves whether or not the circumstances justify a greater charge for a short haul, except on their own line; where there is a joint line, must before making the charge obtain order of Commission. Trammel, etc., R. R. Com'rs of Ga. v. Clyde Steamship Co., 5 I. C. C. 324, 4 I. C. R. 120. Order not enforced. Int. Com. Com. v. W. & A. A. Co., 88 Fed. 166, 63 Fed. 63, 35 C. C. A. 226, 181 U. S. 29, 45 L. Ed. 729, 21 Sup. Ct. 512. Rates to Pacific Coast Terminals may be lower than to Spokane. Merch. Union of Spokane Falls v. N. P. R. Co., 5 I. C. C. 478, 4 I. C. R. 183. Order not enforced. Farmers L. & T. Co., v. N. Pac. R. Co., 83 Fed. 249. Greater charge to Chattanooga than through Chattanooga to Nashville illegal. Board of Trade of Chattanooga v. E. T., V. & G. R. Co., 5 I. C. C. 546, 4 I. C. R. 213. Order enforced. 85 Fed. 107, 99 Fed. 52, 39 C. C. A. 413. Reversed in Supreme Court. East Tenn., Va. & Ga. R. Co.v. Int. Com. Com., 181 U. S. 1, 45 L. Ed. 719, 21 Sup. Ct. 516. When difference justifies, it must be reasonable. Competition for the longer haul between carrier subject to the Act not dissimilar circumstance. Gerke Brewing Co. v. L. & N. R. Co., 5 I. C. C. 596, 4 I. C. R. 267. The fact that one city is larger than another, no such dissimilar condition as the statute requires. Board of Trade of Troy v. Ala. Midland R. Co., 6 I. C. C. 1. Order not enforced. Int. Com. Com. v. Ala. M. R. Co., 69 Fed. 227, 74 Fed. 715, 21 C. C. A. 51, 168 U. S. 144, 42 L. Ed. 414, 18 Sup. Ct. 45. Competition of markets and carriers not justify carriers in first instance to charge more for a longer than a shorter haul, but the carrier must obtain permission of the Interstate Com. Com. Behlmer v. Memphis & C. R. Co., 6 I. C. C. 257, 4 I. C. R. 520. Order not enforced. 71 Fed. 835. Circuit court reversed. 83 Fed. 898. Circuit court of appeals reversed L. & N. R. Co. v. Behlmer, 175 U. S. 648, 44 L. Ed. 309, 20 Sup. Ct. 209. Shortage of grain crop sufficient to justify temporary order to charge less for a longer than for a shorter haul. Re Application of Freemont, Elkhorn & Mo. Valley R. Co. et al., 6 I. C. C. 293. Each case must be determined on its special facts. Re Petition

of Cincinnati, H. & D. R. Co., for Relief Under Section 4, 6 I. C. C. 323. World's Fair sufficient reason for relief under proviso. Re Petition of Cincinnati, H. & D. R. Co., for Relief Under Section 4, 6 I. C. C. 323. Re Application of Rome, Watertown, etc., R. Co., 6 I. C. C. 328. That there is a shorter line to the same point does not justify relief. Hill & Bro. v. Nashville, C. & St. L. R. Co., 6 I. C. C. 343. "Line" means a physical line, not a mere business arrangement. Daniels v. Chicago, R. I. & P. R. Co., 6 I. C. C. 458, 476. To Kansas City the longer distance, a less rate should not be given than to Wichita the shorter. Johnston-Larimer Dry Goods Co. v. A. T. & S. F. R. Co., 6 I. C. C. 568, 12 I. C. C. 47, 188. Violation of section a form of unjust discrimination. McClelen v. So. Ry. Co., 6 I. C. C. 588. Order not enforced. Int. Com. Com. v. So. Ry. Co., 105 Fed. 703. Dissimilarity of the carrier's own making not justify deviation from rule. Jerome Hill Cotton v. M. K. & T. Ry. Co., 6 I. C. C. 601. Competition at the longer distance point by carriers subject to Act not justify less rate for longer haul unless by permission of Commission. Board of Trade of Lynchburg v. Old Dominion Steamship Co., 6 I. C. C. 632. Re Alleged Violation of Fourth Section, 7 I. C. C. 61. Section not violated by charging the same rate for the shorter as for the longer distance. Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co., 7 I. C. C. 93, 163. Carrier may meet but not extinguish water competition. Brewer v. L. & N. R. Co. 7 I. C. C. 224, 235; Railroad Com'rs of Ky. v. Cincinnati, N. O. & T. P. R. Co., 7 I. C. C. 380. Order not enforced. Brewer v. Central of Ga. R. Co., 84 Fed. 258. Competition of markets not sufficient to relieve from statute. Fewell v. Richmond & D. R. Co., 7 I. C. C. 354. Higher rates from New Orleans to La Grange the shorter distance than to Atlanta illegal. Callaway v. L. & N. R. Co., 7 I. C. C. 431. Order enforced. 102 Fed. 709. Circuit court reversed. Int. Com. Com. v. L. & N. R. Co., 190 U. S. 273, 47 L. Ed. 1047, 23 Sup. Ct. 687. Water competition justifies a less charge for the longer haul. Savannah Bureau of Freight & Transportation v. Charleston & S. R. Co., 7 I. C. C. 458; Dallas Freight Bureau v. Tex. & Pac. Ry. Co., 8 I. C. C. 33. Competition with a foreign carrier not subject to the law justifies

an order of the Commission relieving from section. Re Application of A. T. & S. F. Ry. Co., 7 I. C. C. 593. Re Alleged Disturbance of Passenger Rates by Canadian Pacific R. Co., 8 I. C. C. 71. Mere fact of competition not of itself justify relief from section. Philips, Bailey & Co. v. L. & N. R. Co., 8 I. C. C. 93, citing decisions of Supreme Court. May make lower rate on goods exported than on those consumed at the port. Kemble v. Boston & A. R. Co., 8 I. C. C. 110. Section violated. Re Alleged Violation of Act by St. L. & S. F. Ry. Co., 8 I. C. C. 290. Railroad Com'rs of Kansas v. A. T. & S. F. Ry. Co., 8 I. C. C. 304; Chicago Fire Proof, etc., Co. v. Chicago & N. W. Ry. Co., 8 I. CC. C. 316. Kindel v. A. T. & S. F. Ry. Co., 8 I. C. C. 608, 9 I. C. C. 606. Rail competition may be considered, the effect of such competition being a question of fact in each case. Tileston Milling Co. v. N. Pac. Ry Co., 8 I. C. C. 346, citing and following Int. Com. Com. v. Alabama M. R. Co., 168 U. S. 144, 42 L. Ed. 414, 18 Sup. Ct. 45. Dissimilar conditions. Gustin v. Burlington & M. R. R. Co., 8 I. C. C. 481; Marten v. L. & N. R. Co., 9 I. C. C. 581. Facts not authorizing the difference existing between the long and short haul rates. Board of Trade of Hampton v. N. C. & St. L. Ry. Co., 8 I. C. C. 503. Order not enforced. Int. Com. Com. v. N. C. & St. L. Ry. Co., 120 Fed. 934. Demurrage charges not within section. Penn. Millers' State Asso. v. Philadelphia & R. Ry. Co., 8 I. C. C. 531. All forms of competition must be considered, but in each case it is a question of fact as to the affect to be given such competition. Holdzkom v. Mich. Cent. Ry. Co., 9 I. C. C. 42; Dallas Freight Bureau v. Austin & N. W. R. Co., 9 I. C. C. 68. Carrier may meet competition of shorter line. Ulrick v. Lake Shore, etc., Ry. Co., 9 I. C. C. 495. Competitive conditions at Kansas City entitle her to a lower rate to Texas ports than Wichita. Mayor, etc., of Wichita v. A. T. & S. F. Ry. Co., 9 I. C. C. 534, 558, citing Supreme Court decisions since the case of Johnston, etc., Dry Goods Co. v. A. T. & S. F. Ry. Co., 6 I. C. C. 568; see also same plaintiff v. New York & Tex. S. S. Co., 12 I. C. C. 58. Higher rate to Chattanooga than to Nashville the longer distance not illegal under the circumstances. Chamber of Commerce of Chat-

tanooga v. So. Ry. Co., 10 I. C. C. 111, citing and following previous holding of Supreme Court in same case, 181 U. S. 29, 45 L. Ed. 729, 21 Sup. Ct. 512. Same holding as to cities in Alabama and Mississippi. Aberdeen Group Commercial Asso. v. M. & O. R. Co., 10 I. C. C. 289. As to cities in Florida. Rock Hill Buggy Co. v. So. Ry. Co., 11 I. C. C. 229. Difference greater than section justified. Gardner & Clark v. So. Ry. Co., 10 I. C. C. 342; Lehman-Higginson Grocery Co. v. A. T. & S. F. R. Co., 10 I. C. C. 460. Burden on carrier to show circumstances justifying greater charge for shorter haul. Geo. M. Speigle Co. v. Chesapeake & O. Ry. Co., 11 I. C. C. 367. Section not violated. Dewey Bros. Co. v. B. & O. R. Co., 11 I. C. C. 475; Griffin Grocery Co. v. So. Ry. Co., 11 I. C. C. 522; Farrar v. So. Ry. Co., 11 I. C. C. 632; Hastings Malting Co. v. Chicago, M. & St. P. Ry. Co., 11 I. C. C. 675; Village of Goodhue v. Chicago G. W. Ry. Co., 11 I. C. C. 683; Durham v. Ill. Cent. R. Co., 12 I. C. C. 37; Pecos Mercantile Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 173; R. R. Com. of Ky. v. L. & N. R. Co., 13 I. C. C. 300; Topeka Banana Dealers' Asso. v. St. L. & S. F. R. Co., 13 I. C. C. 620; Phillips-Trawick-James Co. v. So. Pac. Co., 13 I. C. C. 644. A mere theoretical or paper rate not sufficient to show violation. Mo. & Kan. Shippers Asso. v. M. K. & T. Ry. Co., 12 I. C. C. 483. The different circumstances must not only be clearly shown, but must also clearly exercise a potent or controlling influence. Bovaird Supply Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 56. Facts that entitle the carrier to charge more for the shorter than the longer haul. Gump. v. B. & O. R. Co., 14 I. C. C. 98; Chicago Sash & Door Asso. v. Norfolk & W. R. Co., 14 I. C. C. 594. Section violated. Greater Des Moines Com. v. Chicago G. W. Ry. Co., 14 I. C. C. 294. Section referred to and held not violated. MacGillis & Gibbs Co. v. Chicago, M. & St. P. Ry. Co., 15 I. C. C. 329. Section not affected by amendment of June 29, 1906. City of Spokane v. N. Pac. R. Co., 15 I. C. C. 376, 388. Competition is a fact that justifies a less charge for a longer than a shorter haul. Ex parte Koehler, 31 Fed. 315, 12 Sawy. 446; Int. Com. Com. v. Cincinnati, N. O. & T. P. Ry. Co., 56 Fed. 951. Reversed. 162 U. S. 184, 40 L. Ed. 935, 16 Sup. Ct. 700. Where circumstances and conditions are not similar, the law does not apply.

When there is doubt as to whether or not there is a difference, application for relief should be made to the Commission. Mo. Pac. Ry. Co. v. Tex. & Pac. Ry. Co., 31 Fed. 862. That the rate for the longer haul was a joint rate will not relieve from section. Junod v. Chicago & N. W. Ry. Co., 47 Fed. 290; Osborne v. Chicago & N. W. Ry. Co., 48 Fed. 49. Reversed on this point. Chicago & N. W. v. Osborne, 52 Fed. 912, 3 C. C. A. 347. Followed, United States v. Mellen, 53 Fed. 229; Parsons v. Chicago & N. W. Ry. Co., 63 Fed. 903, 11 C. C. A. 489, 37 U. S. App. 389. Affirmed. 167 U. S. 447, 42 L. Ed. 231, 17 Sup. Ct. 887; Int. Com. Com. v. Alabama M. Ry. Co., 69 Fed. 227. Affirmed. 74 Fed. 715, 21 C. C. A. 51, 168 U. S. 144, 42 L. Ed. 414, 18 Sup. Ct. 45. The carrier may act under the proviso without first applying to the Commission, though the Commission has the right to revise this action. Int. Com. Com. v. A. T. & S. F. R. Co., 50 Fed. 295, 300; Detroit, G. H. & M. Ry. Co. v. Int. Com. Com., 74 Fed. 803, 819, 21 C. C. A. 103, 43 U. S. App. 308, reversing 57 Fed. 1005, 4 I. C. R. 722. Affirmed. 167 U. S. 633, 42 L. Ed. 306, 17 Sup. Ct. 986. Where the more distant point can be reached by rail and water and the less distant by only one rail carrier, the circumstances are not similar. Behlmer v. L. & N. R. Co., 71 Fed. 835. Reversed. 83 Fed. 898, 28 C. C. A. 229. Decree of circuit court of appeals reversed. L. & N. R. Co. v. Behlmer, 175 U. S. 648, 44 L. Ed. 309, 20 Sup. Ct. 209. This section does not prevent common carriers from making special rates to meet competition and increase their business. Int. Com. Com. v. Alabama M. R. Co., 74 Fed. 715, 723, 724, 21 C. C. A. 51, 41 U. S. App. 453, 5 I. C. R. 685. Charges for delivery, storage, etc., are included within meaning of section. Detroit, G. H. & M. Ry. Co. v. Int. Com. Co. 74 Fed. 803. Competition to justify a greater charge for the shorter haul must be of that kind which could carry the freight to the longer distance point if the carrier making such charge did not. Behlmer v. L. & N. R. Co., 83 Fed. 898, 906. Reversed. L. & N. R. Co. v. Behlmer, 175 U. S. 648, 44 L. Ed. 309, 20 Sup. Ct. 209. Competition between rival rail carriers must be considered in determining whether or not dissimilar conditions exist. Brewer v. Central of Ga. Ry. Co., 84 Fed. 258. Mere dissimilarity insufficient, must be sufficient to justify

the difference in the charge. Int. Com. Com. v. East Tenn., Va. & Ga. Ry. Co., 85 Fed. 107. Affirmed, 99 Fed. 52, 39 C. C. A. 413. Reversed. East Tenn., Va. & Ga. Ry. Co. v. Int. Com. Com., 181 U. S. 1, 45 L. Ed. 719, 21 Sup. Ct. 516. What facts constitute dissimilar conditions. Int. Com. Com. v. Western & A. R. Co., 88 Fed. 186. Affirmed. 93 Fed. 83, 35 C. C. A. 217, 181 U. S. 29, 45 L. Ed. 729, 21 Sup. Ct. 512. Discrimination cannot be justified where the dissimilar conditions are created by roads stifling competition. East Tenn., Va. & Ga. Ry. Co. v. Int. Com. Com., 99 Fed. 52, 62, 63, 39 C. C. A. 413. Reversed by Supreme Court. 181 U. S. 1, 45 L. Ed. 719, 21 Sup. Ct. 516. Commission finding that the rate for the shorter haul illegal will not be set aside unless error clearly appears. Int. Com. Com. v. L. & N. R. Co., 102 Fed. 709. Reversed. 108 Fed. 988, 46 C. C. A. 685, 190 U. S. 273, 47 L. Ed. 1047, 23 Sup. Ct. 687. The Commission must consider the evidence showing all kinds of competition. Int. Com. Com. v. So. Ry. Co., 105 Fed. 705. Evidence showing no violation of this section will show that there is no violation of section three. Int. Com. Com. v. Nashville, C. & St. L. Ry. Co., 120 Fed. 934. The question of whether or not circumstances are or are not dissimilar is one of fact peculiarly within the province of the Commission to determine. Cincinnati, N. O. & T. P. R. Co. v. Int. Com. Com., 162 U. S. 184, 194, 40 L. Ed. 935, 938, 16 Sup. Ct. 700. Section relates only to transportation by rail and charges therefor and not to cartage. Int. Com. Com. v. Detroit, G. H. & M. R. Co., 167 U. S. 633, 644, 42 L. Ed. 306, 309, 17 Sup. Ct. 986. All competition will not justify the greater charge for the shorter haul. Carrier need not first apply to the Commission before acting on dissimilar conditions. Int. Com. Com. v. Alabama M. R. Co., 168 U. S. 144, 167, 169, 42 L. Ed. 414, 423, 424, 18 Sup. Ct. 45. This case as said by Mr. Justice Harlan, dissenting, goes a long ways to make the Commission a useless body. Market competition, and competition of carriers subject to Act must be considered by the Commission. L. & N. R. Co. v. Behlmer, 175 U. S. 648, 44 L. Ed. 309, 20 Sup. Ct. 209; East Tenn., Va. & Ga. Ry. Co. v. Int. Com. Com., 181 U. S. 1, 45 L. Ed. 719, 21 Sup. Ct. 516; Int. Com. Com. v.

Clyde S. S. Co., 181 U. S. 29, 45 L. Ed. 729, 21 Sup. Ct. 512. Possibility of competition at the shorter distance point not material. Int. Com. Com. v. L. & N. R. Co., 190 U. S. 273, 47 L. Ed. 1047, 23 Sup. Ct. 687. In fixing rates carriers may take into consideration genuine competition with other carriers. Int. Com. Com. v. Chicago G. W. R. Co., 209 U. S. 108, 119, 52 L. Ed. 705, 712, 28 Sup. Ct. 493.

Section proposes an equitable rule. Morse Bros. Co. v. C. R. I. P. Ry. Co., 16 I. C. C. 550, 552.

Section applied—Hewitt & Conno v. C. & N. W. R. Co., 16 I. C. C. 431, 434; Heileman Brewing Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 386. Burden on carrier to show different "circumstances and conditions." Castens Packing Co. v. O. S. L. R. R. Co., 17 I. C. C. 324, 326.

**Notes to Section as Amended.**

Old and new sections copied and amended section applied. Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329; City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400. In each of these cases applications for relief made under the fourth section were considered and determined. These cases have been designated in the courts as the Intermountain cases. Orders of the Commission held invalid. A. T. & S. F. Ry. Co. v. United States, 191 Fed. 856, Op. Com. Ct. 50, 51, p. 229. The section as amended held valid, the Commerce Court reversed and the Commission sustained. U. S. v. A. T. & S. F. Ry. Co., 234 U. S. 476, 58 L. Ed. 1408, 34 Sup. Ct. 986, in the opinions see citation of cases under old statute. Competition between different railways not sufficient to authorize relief under section. Transportation of lime in carloads, 21 I. C. C. 170, 172. No violation of section shown. Wright Wire Co. v. P. & L. E. R. R. Co., 21 I. C. C. 64; Merchants Freight Bureau v. M. P. Ry. Co., 21 I. C. C. 573. May determine complaint under Section 3 although application for relief under Sec. 4 is pending. Mayor, etc., of Boston, Ga. v. A. C. L. R. Co., 24 I. C. C. 50. Fifteen per cent excess mileage constitutes a circuitous route justifying the granting of relief under section, —. Application for Relief under Fourth Section in Regard to Rates on Salt, 24 I. C. C. 192, 195. Bowling Green Bus. Men's Ass'n v. L. & N. R. Co., 24 I. C.

C. 228; Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co., 25 I. C. C. 93; Alton Board of Trade v. C. & A. R. R. Co., 25 I. C. C. 589; Standard Oil Co. v. P. Co., 29 I. C. C. 524; Fort Scott Industrial Ass'n v. St. L. & S. F. R. R. Co., 29 I. C. C. 629; Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621. Section violated. Kellogg Toasted Corn Flakes Co. v. M. C. R. R. Co., 24 I. C. C. 604, and stating that over 5,000 applications for relief had been filed. This number had increased on June 7, 1919 to 11377. No award of damages for violation of section, prior to date of order denying application, Appalachia Lumber Co. v. L. & N. R. R. Co., 25 I. C. C. 193, 197; Janesville Clothing Co. v. C. & N. W. Ry. Co., 26 I. C. C. 628, 630. Burden placed on carriers to show they were entitled to relief. Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 660. Section violated and relief therefrom denied. Maier & Co. v. S. P. Co., 29 I. C. C. 103. Fourth Section violation should not extend beyond the real necessity of the competitive or other controlling influences. Emlenton Petroleum Rates, 29 I. C. C. 519, 521. Southeastern situation discussed and rules prescribed. Fourth Section Violations in the Southeast, 30 I. C. C. 153-336. Water Competition considered. Rates on Sugar, 31 I. C. C. 495; Fourth Section Violation in Rates on Sugar, 31 I. C. C. 511. The burden is on the carrier to show special circumstances entitling it to relief. Louisville & N. R. Co. v. United States, 225 Fed. 571. Substance and not mere form considered. U. S. v. L. & N. R. R. Co., 235 U. S. 314, 59 L. Ed. 245, 35 Sup. Ct. 113; Duncan v. N. C. & St. L. R. Co., 35 I. C. C. 477.

Atchison, T. & S. F. R. Co. v. United States, 191 Fed. 856. United States v. A. T. & S. F. Ry. Co., 234 U. S. 476, 58 L. Ed. 1408, 34 Sup. Ct. Rep. 986.

**Notes of Decisions Rendered Since 1915.**

Aggregates-of-intermediate clause and classification differences discussed. Through Rates to Points in Louisiana and Texas, 38 I. C. C. 153; Lafayette Chamber of Commerce v. L. W. R. Co., 41 I. C. C. 297; Memphis Freight Bureau v. St. Louis I. M. & So. Ry. Co., 39 I. C. C. 224, 237, 245; Scott Paper Co. v. A. C. R. R. Co., 44 I. C. C. 503. Damages

not awarded for violation of long-and-short haul provision. Beebe & Runyan Fur. Co. v. C. B. & Q. R. Co., 41 I. C. C. 464. Provision applies to route of one carrier and through route of more than one carrier. Proportional Rates to Gulf Ports 44 I. C. C. 543, 545. Transcontinental situation. Transcontinental Rates. 46 I. C. C. 236. Powers of Commission discussed. United States v. Merchants & M. Traffic Asso., 242 U. S. 178, 61 L. Ed. 233, 37 Sup. Ct. 24; Louisville & N. R. Co. v. United States, 245 U. S. 463, 62 L. Ed. 400, 38 Sup. Ct. 141.

§ 349. **Relief From Long and Short Haul Clause.**—Provided, that upon application to the Commission such common carrier may in special cases, after investigation. be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section; but in exercising the authority conferred upon it in this proviso the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and if a circuitous rail line or route is, because of such circuity, granted authority to meet the charges of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its line, the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points; and no such authorization shall be granted on account of merely potential water competition not actually in existence.

Second part of paragraph 1 of section 4 of Interstate Commerce Act as amended by Transportation Act 1920 section 406. The former section read: *Provided, however,* That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time pre-

scribe the extent to which such designated common carrier may be relieved from the operation of this section.

Added by amendment of June 18, 1910. For annotations see next preceding section.

§ 350. **Changes Not Required Until Further Orders.**—And provided further, That rates, fares, or charges existing at the time of the passage of this amendatory Act by virtue of orders of the Commission or as to which application has theretofore been filed with the Commission and not yet acted upon, shall not be required to be changed by reason of the provisions of this section until the further order of or a determination by the Commission.

Last part of paragraph 1 of section 4 Interstate Commerce Act enacted by Transportation Act 1920. The comparable provision of the former law read: *Provided further*, That no rates or changes lawfully existing at the time of the passage of this amendatory act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months fater the passage of this act, nor in any case where application shall have been filed before the Commission, in accordance with the provisions of this section, until a determination of such application by the Commission.

Added by amendment of June 18, 1910. Section quoted, Colorado Coal Traffic Ass'n v. C. & S. R. Co., 19 I. C. C. 478.

§ 351. **Rates Reduced by Competition with Water Routes —Not Increased When.**—Wherever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

Paragraph 2 of section 4 Interstate Commerce Act. The only changes made in this section by Transportation Act 1920 were to substitute "wherever" for "whenever" in first line and to omit "Interstate Commerce" before the word "Commission."

Suspension of lake navigation during winter not an "elimination of water competition." Am. Insulated Wire & Cable

Co. v. C. & N. W. Ry. Co., 26 I. C. C. 415, 416. Not determined whether or not Section applies to rates reduced before date of amendment, although in quoting the section the word "shall" is italicized. Pig Iron Rates from Va. to Pa., 27 I. C. C. 343, 345.

**Notes of Decisions Rendered Since 1915.**

The proviso does not apply where the reduction was made with the approval of the Commission. Skinner & Eddy Corp. v. United States, 250 U. S. —, 63 L. Ed. —, 39 Sup. Ct. —; Marshall Wells Hdw. Co. v. S. P. & S. Ry. Co., 53 I. C. C. 684.

§ 352. **Pooling of Freights and Division of Earnings Regulated.**—That, except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of section 1 of this Act, it shall be unlawful for any common carrier subject to this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid each day of its continuance shall be deemed a separate offense: Provided, That whenever the Commission is of opinion, after hearing upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this Act, or upon its own initiative, that the division of their traffic or earnings, to the extent indicated by the Commission, will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition, the Commission shall have authority by order to approve and authorize, if assented to by all the carriers involved, such division of traffic or earnings, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises.

Transportation Act 1920, Section 407. Interstate Commerce Act, section 5, paragraph 1. The former section read: That it shall be unlawful for any common carrier subject to the

provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Section five of original Act.

The Canadian Act, Canadian Railway Law by MacMurchy & Denison, 501, is as follows:

"No company shall, except in accordance with the provisions of this act, directly or indirectly, pool its freights or tolls with the freights or tolls of any other railway company or common carrier, nor divide its earnings or any portion thereof with any other railway company or common carrier. nor enter into any contract, arrangement, agreement, or combination to effect, or which may effect, any such result, without leave therefor having been obtained from the board."

In the same volume, p. 502, referring to this act, it is stated:

"Railroad pools are not contrary to public policy in England or in Canada. Section 284 of the Railway Act, which is similar in its terms to section 87 of the Railway Clauses Act, 1845, permits working or traffic agreements: See Hare v. L. & N. W. R. Co., 2 J. & H. 480, 30 L. J. Ch. 817. Two companies having the same termini, may, in order to avoid competition, come to an agreement with reference to traffic along existing routes on their lines, with a view to distributed such traffic, and the revenue derived from it, between the two companies. This case was followed in Great Western R. Co. v. Grand Trunk R. W. Co., 25 U. C. R. 37, and Campbell v. Northern R. W. Co., 26 Gr. 522."

Pooling between a rail carrier subject to the act and a pipe line not subject not within prohibition of section. Independent Refiners' Asso. v. Western New York & Penn. R. Co., 5 I. C. C. 415, 4 I. C. R. 162. Fines of carriers for violating an agreement to divide traffic within section. Freight Bureau of Cincinnati v. Cincinnati, N. O. & T. P. R. Co., 6 I. C. C. 195, 4 I. C. R. 592. Order not enforced. Int. Com. Com. v. Cincinnati, N. O. & T. R. Co., 76 Fed. 183, 167 U. S. 479, 42 L.

Ed. 243, 17 Sup. Ct. 896. A pool may be formed by agreements as to routing. Consolidated Forwarding Co. v. So. Pac. Co., 9 I. C. C. 182, 206-a. Order enforced. Int. Com. Com. v. So. Pac. Co., 132 Fed. 829. Reversed. So. Pac. Co. v. Int. Com. Com., 200 U. S. 536, 50 L. Ed. 585, 26 Sup. Ct. 330; Consolidated Forwarding Co. v. So. Pac. Co., 10 I. C. C. 590. Doubtful whether a pool of passenger earnings from immigrant traffic in violation of section. Re Transportation of Immigrants, 10 I. C. C. 13. Purpose of section to prevent restriction of competition. Tift v. So. Ry. Co., 10 I. C. C. 548, 580. Order enforced. 138 Fed. 753; So. Ry. Co. v. Tift, 148 Fed. 1021, 206 U. S. 428, 51 L. Ed. 1124, 27 Sup. Ct. 709. Pooling by water carriers not within section. Cosmopolitan Shipping Co. v. Hamburg-American P. Co., 13 I. C. C. 266, 274. It was not the intention of the Interstate Commerce Act to include carriers within the Sherman Anti-Trust Act. United States v. Trans-Missouri Freight Asso., 53 Fed. 440, 1 Fed. Anti-Trust Dec. 80. Affirmed, holding that combinations in restraint of trade must be unreasonable to be illegal. United States v. Trans-Missouri Freight Asso., 58 Fed. 58, 73, 7 C. C. A. 15, 97, 24 L. R. A. 73, 1 Fed. Anti-Trust Dec. 186. Reversed, holding that the Sherman Anti-Trust Act applies to carriers, that all contracts in restraint of trade, whether or not such restraint is unreasonable, are illegal. United States v. Trans-Missouri Freight Asso., 166 U. S. 290, 41 L. Ed. 1007, 17 Sup. Ct. 540, 1 Fed. Anti-Trust Dec. 648. A contract between thirty-two carriers to maintain rates is not violative of section. United States v. Joint Traffic Asso., 76 Fed. 895, 1 Fed. Anti-Trust Dec. 615. Affirmed, 89 Fed. 1020, 32 C. C. A. 491, 45 U. S. App. 726, 1 Fed. Anti-Trust Dec. 869. Reversed, holding that any contract restricting competition in interstate trade is illegal. United States v. Joint Traffic Asso., 171 U. S. 505, 43 L. Ed. 259, 19 Sup. Ct. 25, 1 Fed. Anti-Trust Dec. 869. Any arrangement, oral or otherwise, resulting in the division of earnings of competing carriers is illegal and violates section. Re Pooling Freights, 115 Fed. 588. Followed Int. Com. Com. v. So. Pac. Co., 132 Fed. 529, 839. Tonnage pool effective by initial carrier routing freight illegal. Int. Com. Com. v. So. Pac. Co., 123 Fed. 597, 602, 132 Fed. 829, 137 Fed. 606. Reversed, holding that

practice did not constitute a pooling agreement. So. Pac. Co. v. Int. Com. Com., 200 U. S. 536, 50 L. Ed. 585, 26 Sup. Ct. 330. Effect on rates of a combination to fix rates. Tift v. So. Ry. Co., 138 Fed. 753, 760, 761, 762, 763. Affirmed. So. Ry. Co. v. Tift, 206 U. S. 428, 51 L. Ed. 1124, 27 Sup. Ct. 709.

**Notes of Decision Since 1909.**

Section not violated. Ritter v. O. S. L. R. R. Co., 19 I. C. C. 443, 447.

§ 352A. **Consolidation of Carriers.**—Whenever the Commission is of opinion, after hearing, upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this Act, that the acquisition, to the extent indicated by the Commission, by one of such carriers of the control of any other such carrier or carriers either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, will be in the public interest, the Commission shall have authority by order to approve and authorize such acquisition, under such rules and regulations and for such consideration, and on such terms and conditions as shall be found by the Commission to be just and reasonable in the premises.

The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1) or (2), as it may deem necessary or appropriate.

Section 5, paragraphs 2 and 3, Interstate Commerce Act added by Transportation Act 1920 section 407.

Sections 352A to 352G are all taken from section 407 and are part of section 5.

§ 352B. **Commission to Adopt a Plan.**—The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing

requirements, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.

Paragraph 4 section 5 as added by Transportation Act 1920.

§ 352C. **Notice of Plan to Be Given.**—When the Commission has agreed upon a tentative plan, it shall give the same due publicity and upon reasonable notice, including notice to the Governor of each State, shall hear all persons who may file or present objections thereto. The Commission is authorized to prescribe a procedure for such hearings and to fix a time for bringing them to a close. After the hearings are at an end, the Commission shall adopt a plan for such consolidation and publish the same; but it may at any time thereafter, upon its own motion or upon application, reopen the subject for such changes or modifications as in its judgment will promote the public interest. The consolidations herein provided for shall be in harmony with such plan.

Paragraph 5 of section 5 as added by Transportation Act 1920.

§ 352D. **Conditions Under Which Consolidations Must be Made.**—It shall be lawful for two or more carriers by railroad, subject to this Act, to consolidate their properties or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership, management, and operation, under the following conditions:

The proposed consolidation must be in harmony with and in furtherance of the complete plan of consolidation mentioned in paragraph (5) and must be approved by the Commission:

"The bonds at par of the corporation which is to become the owner of the consolidated properties, together with the outstanding capital stock at par of such corporation, shall not exceed the value of the consolidated properties as deter-

mined by the Commission. The value of the properties sought to be consolidated shall be ascertained by the Commission under section 19a of this Act, and it shall be the duty of the Commission to proceed immediately to the ascertainment of such value for the properties involved in a proposed consolidation upon the filing of the application for such consolidation.

Sub paragraphs, heading and a and b of paragraph 6 of section 5 added by Transportation Act 1920.

§ 352E. **Applications to Consolidate.**—Whenever two or more carriers propose a consolidation under this section, they shall present their application therefor to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties sought to be consolidated is situated and the carriers involved in the proposed consolidation, of the time and place for a public hearing. If after such hearing the Commission finds that the public interest will be promoted by the consolidation and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, with such modifications and upon such terms and conditions as it may prescribe, and thereupon such consolidation may be effected, in accordance with such order, if all the carriers involved assent thereto, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

Sub paragraph C of paragraph 6 of section 5 added by Transportation Act 1920.

§ 352F. **Express Companies Consolidation.**—The power and authority of the Commission to approve and authorize the consolidation of two or more carriers shall extend and apply to the consolidation of four express companies into the American Railway Express Company, a Delaware corporation, if application for such approval and authority is made to the Commission within thirty days after the passage of this amendatory Act; and pending the decisions of the Commission such consolidation shall not be dissolved.

Paragraph 7 of section 5 as added by Transportation Act 1920.

§ 352G. **Anti-Trust Laws Not to Apply.**—The carriers affected by any order made under the foregoing provisions of this section and any corporation organized to effect a consolidation approved and authorized in such order shall be, and they are hereby, relieved from the operation of the 'antitrust laws,' as designated in section 1 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and of all other restraints or prohibitions by law, State or Federal, in so far as may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the foregoing provisions of this section."

Paragraph 8 of section 5 as added by Transportation Act 1920.

§ 353. **Rail Carrier Not to Own Competing Water Carriers.**—From and after the first day of July, nineteen hundred and fourteen, it shall be unlawful for any railroad company or other common carrier subject to the act to regulate commerce to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stock holders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense.

Added by amendment of August 24, 1912, Sec. 11. Known as Panama Canal Act, made Par. 9 of Sec. 5 by Transportation Act 1920.

§ 354. **Whether or Not Competition Exists to Be Determined by the Commission.**—Jurisdiction is hereby conferred on the Interstate Commerce Commission to determine questions of fact as to the competition or possibility of com-

petition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of this section and pray for an order permitting the continuance of any vessel or vessels already in operation, or for the purpose of asking an order to install new service not in conflict with the provisions of this paragraph. The Commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the Commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said Commission shall be final.

Added by amendment of Aug. 24, 1912, Sec. 11, par. 10, Section 5. On April 14, 1914 the Commission issued the following conferenee ruling:

461. Water carriers controlled by other common carriers. —Section 5 of the act as amended by the Panama Canal Act prohibits common carriers subject to the act to have, after July 1, 1914, any interest, directly or indirectly, in any common carrier by water, or any vessel carrying freight or passengers, with which said carrier does or may compete for traffic.

The manifest purpose of this law is to bring about discontinuance of common ownership or control of water carriers except in those instances in which, after investigation and hearing, it is found that such operation is in the interest of the public or of advantage to the convenience and commerce of the people, and neither excludes, prevents, nor reduces competition on the route by water. The act does not in specific words authorize the continuance of such common ownership or control beyond July 1, 1914, pending the decision of the Commission on application relative thereto; but it is provided that any application filed before July 1, 1914, may be considered and granted thereafter. It is not conceivable that the Congress intended that the service should be withdrawn from the public on July 1, 1914, if for good and sufficient reasons it had been impossible for the Commission to determine the questions presented in the application before that date. Al-

though the language employed is different, it seems that the legislative intent was similar to that expressed in the amended fourth section of the act and in the safety appliance acts.

The Commission therefore interprets the amendment to section 5 of the act as contemplating and authorizing a continuance of any existing common ownership or control after July 1, 1914, between rail and other carriers and water carriers not traversing the Panama Canal until such time as the Commission has passed upon the application relative thereto, provided such application is filed with the Commission prior to July 1, 1914.

"May compete for traffic," "existing specified service by water," "through the Panama Canal," defined and statute discussed. Application S. P. Co., 32 I. C. C. 690. Continued ownership not shown to be "in the interest of the public." S. P. Co.— Ownership of Schooner Pasadena, 33 I. C. C. 476. "The purpose of the Panama Canal act was to preserve to the common interest of the people, free and unfettered the 'water road bed' via the Panama Canal." Lake Line Application Under Panama Canal Act, 33 I. C. C. 699. Though all rail lines and joint rates make competition within meaning of act. Application Penn. Co., 34 I. C. C. 47. Ferry boat included in meaning of Act. Application Grand Trunk Railway Co., 34 I. C. C. 49. B. R. & P. Ry. Co., Operation of Car Ferry, 34 I. C. C. 52; G. T. W. Ry. Co., Operation Car Ferry, 34 I. C. C. 54.

"A rail carrier does not necessarily have to reach a point in order to compete with water carriers that operate directly to that joint, but that such competition may exist by the rail carrier's participation in joint rates." S. P. Co. Ownership of Oil Steamer, 34 I. C. C. 77; A. A. R. R. Co., Operation Car Ferry Boats, 34 I. C. C. 83; P. M. & B. L. E. R. R. Co., Operation of Car Ferry Boats, 34 I. C. C. 86. Competition found not to exist. S. P. Co., Steamboats Sacramento River, 34 I. C. C. 174. Steamer Lines on Chesapeake Bay, 35 I. C. C. 692 applying the section. For other applications acted on, see Application of Duluth South Shore & A. R. Co., et al., 33 I. C. C. 229; Application of Spokane P. & S. R. Co., 34 I. C. C. 462; Application of S. P. Co., 34 I. C. C. 648.

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These notes apply generally to sections 353 to 355.

In the report of the House conferees on Transportation Act 1920 it was said: "The House bill in section 408 amended the provisions of the Panama Canal act relating to the ownership of water lines by railroads, so as to allow the commission, when satisfied that the public interests would not be injured, to continue existing service of water lines owned by a railroad, or to permit the establishment of a proposed new service, except on inland waters. The Senate amendment contained no such provision, and the conference bill strikes out this provision in the House bill."

Notwithstanding competition between rail lines and the owned water line, the interest of the public being served the ownership was permitted to continue. Ocean Steamship Co., 37 I. C. C. 422; Ashtabula-Port Maitland Car-Ferry Service, 40 I. C. C. 143. Delaware & Hudson Boat Lines, 40 I. C. C. 297; Boston & Maine Boat Lines, 40 I. C. C. 565; Central Vermont Boat Lines, 40 I. C. C. 589. S. P. Co. Ownership Atlantic Steamship Lines, 43 I. C. C. 168; Application of Grand Trunk Ry. Co., 43 I. C. C. 286; Direct Navigation Company, 46 I. C. C. 378; Steamer Lines on Long Island Sound, 50 I. C. C. 634. Control of Water Carriers by Railroad Carriers, 51 I. C. C. 436.

No competition existing ownership continued.

S. P. Co. Ownership of Oil Steamers, 37 I. C. C. 529; Peninsula & Occidental S. S. Co., 38 I. C. C. 662; Maine Central Boat Lines 40 I. C. C. 272.

See report of Commission to Senate, 39 I. C. C. 1 *seq.*

Some rail ownership continued, others discontinued. Steamer Lines from Norfolk to Baltimore. 41 I. C. C. 285. While it would seem that reason and the decision in United States v. A. T. & S. F. Ry. Co., 234 U. S. 476, 58 L. Ed. 1408, 34 Sup. Ct. 986 would justify an opposite conclusion, the Supreme Court has held that a refusal to permit a rail carrier to continue the ownership of a water line is negative and not subject to review by the courts. Lehigh V. R. Co. v. United States, 243 U. S. 412, 61 L. Ed. 819, 37 Sup. Ct. 434.

§ 355. **Commission May Relieve from Provision.**—If the Interstate Commerce Commission shall be of the opinion that any such existing specified service by water other than through the Panama Canal is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that such extension will neither exclude, prevent, nor reduce competition on the route by water under consideration, the Interstate Commerce Commission may, by order, extend the time during which such service by water may continue to be operated beyond July first, nineteen hundred and fourteen.

Added by amendment of Aug. 24, 1912, Sec. 11, Par. 11 in part, Sec. 5. See preceding section for annotations.

§ 356. **Water Carriers to File Tariffs.**—In every case of such extension the rates, schedules, and practices of such water carrier shall be filed with the Interstate Commerce Commission and shall be subject to the act to regulate commerce and all amendments thereto in the same manner and to the same extent as is the railroad or other common carrier controlling such water carrier or interested in any manner in its operation: Provided, Any application for extension under the terms of this provision filed with the Interstate Commerce Commission prior to July first, nineteen hundred and fourteen, but for any reason not heard and disposed of before said date, may be considered and granted thereafter.

Added by amendment of Aug. 24, 1912, Sec. 11, part Par. 11, Sec. 5.

§ 357. **Violators of Sherman Anti-Trust Act Not to Use Panama Canal.**—No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through said canal if such ship is owned, chartered, operated, or controlled by any person or company which is doing business in violation of the provisions of the act of Congress approved July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," or the provisions of sections seventy-three to seventy-seven, both inclusive, of an act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to pro-

vide revenue for the Government, and for other purposes," or the provisions of any other act of Congress amending or supplementing the said act of July second, eighteen hundred and ninety, commonly known as the Sherman Anti-Trust Act, and amendments thereto, or said sections of the act of August twenty-seventh, eighteen hundred and ninety-four. The question of fact may be determined by the judgment of any court of the United States of competent jurisdiction in any cause pending before it to which the owners or operators of such ship are parties. Suit may be brought by any shipper or by the Attorney General of the United States.

Added by amendment of Aug. 24, 1912.

The Transportation Act Sec. 408 makes no reference to this section, which is part of section 11, Panama Canal Act. See United States Compiled Statutes 1916, Sec. 8836.

§ 358. **Carriers Shall File, Print and Keep Public Schedules of Rates.**—That every common carrier subject to the provisions of this act shall file with the Commission created by this act and print and keep open to public inspection schedules showing all the rates, fares and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep, open to public inspection, as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passengers, shipper or consignee. Such schedules shall be plainly printed in larger

type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation and facilities defined in this act.

Paragraph one, section six, of the Act as amended June 29, 1906. For the original Act and the Act of March 2, 1889. see *post*, § 364.

See Tariff Circular 18-A, for regulations with reference to filing tariffs.

One member of a traffic assocotion may file tariffs for all. Re Filing Copies of Joint Tariffs by Traffic Combinations, 1 I. C. R. 76. Form of type to be used. De Rate Sheets, 1 I. C. R. 316. Must publish tariffs of mileage tickets. Larrison v. Chicago & G. T. R. Co., 1 I. C. C. 147, 1 I. C. R. 369. Re Publication of Tariffs, 1 I. C. R. 598. Local tariffs part of a through tariff and export tariffs should be filed. Re Filing of Joint Tariffs, 1 I. C. C. 657, 2 I. C. R. 9. All tariffs should be publicly announced. Re Tariffs of the Transcontinental Lines, 2 I. C. C. 324, 2 I. C. R. 203. Reduction of rates without filing tariff showing such reduction illegal. Re Passengers Tariffs and Rate Wars, 2 I. C. C. 513, 2 I. C. R. 340. Methods generally adopted in substantial compliance with law sufficient. Re Passenger Tariffs, 2 I. C. C. 649, 2 I. C. R. 445. Purpose of section. Re Atlanta & W. P. R. Co., 3 I. C. C. 75, 2 I. C. R. 480. Foreign carriers engaged in transportation from the United States to an adjacent country must comply with section. Re Investigation of Grand Trunk Railway, 3 I. C. C. 89, 2 I. C. R. 496. On shipments intended to be exported by sea, the tariff should show rate to place of export. New York Produce Ex. v. New York C. H. R. R. Co., 3 I. C. C. 137, 2 I. C. R. 553. Passenger excursion rates must be published. Pittsburg, etc., R. Co. v. Baltimore & O. R. Co., 3 I. C. C. 465, 2 I. C. R. 729. Order not enforced because of error on another point. Int. Com. Com. v. B. & O. R. Co., 43 Fed. 37, 3 I. C. R. 192, 145 U. S. 263, 36 L. Ed. 699, 12 Sup. Ct. 844. Filing of schedules raises no presumption as

to the legality of rates set out therein. San Bernardino Board of Trade v. A. T. & S. F. R., 4 I. C. C. 104, 3 I. C. R. 138. Tariffs on imported goods should be posted at the port of entry and point of destination. New York Board of Trade & Transportation v. The Penn R. Co., 4 I. C. C. 447, 3 I. C. R. 417. Order enforced. Int. Com. Com. v. Tex. Pac. R. Co., 52 Fed. 187, 57 Fed. 948, 6 C. C. A. 653, 20 U. S. App. 1, 4 I. C. R. 408. Reversed on another ground. Tex. & Pac. R. Co. v. Int. Com. Com., 162 U. S. 197, 40 L. Ed 940, 16 Sup. Ct. 666. Must post rates whether commodity exported or not. New Orleans Cotton Exp. v. Louisville, N. O. & Tex. R. Co., 4 I. C. C. 694, 3 I. C. R. 523. A joint tariff must show on its face what roads concur therein. Lehman-Higginson & Co. v. Tex. Pac. R. Co., 5 I. C. C. 44, 3 I. C. R. 706. Two rates on the same commodity should not be retained in the traiff when the lower rate, ostensibly is for a particular class, though actually open to all. Duncan v. A. T. & S. F. R. Co., 6 I. C. C. 85 4 I. C. R. 385. Section and its construction discussed. Re Form and Contents of Rate Schedules, 6 I. C. C. 267, 4 I. C. R. 698. Mere designation in a circular of means of arriving at a rate not sufficient. Colorado Fuel & Iron Co. v. So. Pac. Co., 6 I. C. C. 488, 518. Order not enforced. So. Pac. Co. v. Colorado F. & I. Co., 101 Fed. 779, 42 C. C. A. 12. To use a corporation owned by a carrier to transport freight at other than the published rates violates section. Re Alleged Unlawful Rate and Practices, 7 I. C. C. 33. Posting notice that tariffs may be obtained from agent not sufficient. Rea v. M. & O. R. Co., 7 I. C. C. 43; Johnson v. Chicago, St. P., etc., R. Co., 9 I. C. C. 221, 237. Rules and regulations affecting aggregate of rates must be shown in tariff. Suffern, Hunt & Co. v. Indiana, etc., R. Co., 7 I. C. C. 255, 272, 278, 279; American Warehousemen's Asso. v. Ill. Cent. R. Co., 7 I. C. C. 566. Section construed with reference to joint rates. New York, N. H. & H. v. Platt, 7 I. C. C. 323, 331. Consolidated Forwarding Co. v. So Pac. Co., 9 I. C. C. 182. Order enforced. Int. Com. Com. v. So. Pac. Co., 132 Fed. 829. Reversed. So. Pac. Co. v. Int. Com. Com., 200 U. S. 336, 50 L. Ed. 585, 26 Sup. Ct. 330. Through export rates to foreign countries need not be shown, it is sufficient if the carrier to the port shows its

proportion. Kemble v. Boston & A. R. Co., 8 I. C. C. 110, 119. But where the through rate is made by joint arrangement between the rail and water carrier it must be published. Re Export and Domestic Rates on Grain, 8 I. C. C. 214, 276. Re Tariffs on Export and Import Traffic, 10 I. C. C. 55, 63. A local state rate part of a through rate must be published. Re Export Rates from Points East and West of Mississippi River, 8 I. C. C. 185, 213. Rules and regulations relating to storage should be stated. Penn. Millers State Asso. v. Philadelphia & R. R. Co., 8 I. C. C. 531, 560. When rate is per crate, the weight or dimensions should be prescribed. Re Alleged Unlawful Charges for Transportation of Vegetables, 8 I. C. C. 585. Rates referring to regulations of and charges for private cars must be published. Carr v. N. Pac. R. Co., 9 I. C. C. 1, 15. Tariff should show division to tap line and privilege of milling in transit. Central Yellow Pine Asso. v. Vicksburg, etc., R. Co., 10 I. C. C. 193. Charges for refrigeration must be shown. Re Charges for Transportation and Refrigeration of Fruit, 10 I. C. C. 360, 11 I. C. C. 129. Section violated. Re Alleged Unlawful Rates and Practices in Transportation of Coal, 10 I. C. C. 473, 484. Tariffs should be simple enough to be understood by persons of ordinary comprehension. Pitts v. St. L. & S. F. Ry. Co., 10 I. C. C. 684. Tariffs can not be given a retroactive effect. Re Through Routes and Through Rates, 12 I. C. C. 163. Privilege of stopping in transit to sort, etc., must be stated. Shiel & Co. v. Ill. Cent. R. Co., 12 I. C. C. 210. A toll charge not paid should not be stated in tariff. Pacific Coast Jobbers & Mfgrs. Asso. v. So. Pac. Co., 12 I. C. C. 319. Mistake of agent in stating rate will not relieve from tariff rates. Poor v. Chicago, B. & Q. Ry. Co., 12 I. C. C. 418, 469, citing and following Texas & Pac. R. Co., v. Mugg, 202 U. S. 242, 50 L. Ed. 1011, 26 Sup. Ct. 628. Gulf C. & S. F. R. Co. v. Hefley, 158 U. S. 98, 39 L. Ed. 910, 15 Sup. Ct. 802. See recommendation of Int. Com. Com. in annual report for 1908. Carrier making delivery at its cost should so state in tariff. Schawager & Nettleton v. Great N. R. Co., 12 I. C. C. 521. Misleading, unreasonable or impossible conditions should not be stated in tariffs. Re Released Rates, 13 I. C. C. 556. No allowance not specified in tariffs can be allowed. La Salle,

etc., R. Co. v. Chicago & N. W. R. Co., 13 I. C. C. 610. Tariff filed with commission binding though not posted. Pueblo Transportation Asso. v. So. Pac. Co., 14 I. C. C. 82. Allowance made to shippers for cost of car door boards must be stated. Victor Fuel Co. v. A. T. & S. F. R. Co., 14 I. C. C. 119 So must reconsignment, storage and all other privileges. Folmer & Co. v. Great N. Ry. Co., 15 I. C. C. 33, 36. Transportation by a railroad of employees of express companies engaged along the line of the railroad need not show in tariffs. Re Contracts for Free Transportation, 16 I. C. C. 246, 249. Tariffs are to be construed by their language and not by traffic officials Newton Gum. Co. v. Chicago, B. & O. R. Co., 16 I. C. C. 341, 346. Section requires the filing of schedules, and when such schedules are filed, they show the only legal rates. Kinnavey v. Terminal R. Asso. of St. Louis, 81 Fed. 802. A receiver of a railroad is not bound by a tariff filed before his appointment and which he has not ratified. United States v. De Coursey, 82 Fed. 302. When a higher rate is charged than the rate given the shipper, because of misrouting, the shipper can recover the difference between the rate given him and the one he was compelled to pay. Pond--Decker Lumber Co. v. Spencer, 86 Fed. 846, 849, 30 C. C. A. 430, reversing 81 Fed. 277. Section discussed. United States v. Wood, 142 Fed. 405, 408, 409. The purpose of publication is that the shipper may know not only what he but also what his competitor must pay. United States v. Chicago & A. R. Co., 148 Fed. 646, 648. Assumed, without a definite discussion, that icing charges may be stated separately in schedules. Kundsen-Ferguson Fruit Co. v. Mich. Cent. R. Co., 148 Fed. 968, 971. Shipment of goods on through bill of lading from United States to a foreign country subject to the requirements of the section. Armour Packing Co. v. United States, 153 Fed. 1, 10, 82 C. C. A. 135, 14 L. R. A. (N. S.) 400. Affirmed. 209 U. S. 56, 52 L. Ed. 681, 28 Sup. Ct. 428. Can not evade section when tariffs show a through route by transporting property over another route. United States v. Vacuum Oil Co., 153 Fed. 598. A provision in a passenger ticket not shown in the schedule is unlawful and void. Baltimore & O. R. Co. v. Hamburger, 155 Fed. 849.

When a schedule of rates includes a charge over private tracks, such charge must be collected. Chicago & A. Ry. Co. v. United States, 156 Fed. 558, 84 C. C. A. 324, affirming 148 Fed. 646. So also with reference to an elevator charge and no defense that such payment had to be made to get the business. Chicago, St. P., M. & O. Ry. Co. v. United States, 162 Fed. 835, affirming United States v. Chicago, St. P., M. & O. Ry. Co., 151 Fed. 84. The legality of a terminal charge separately stated must be determined by itself and without reference to the total charge for the through movement. Stickney v. Int. Com. Com., 164 Fed. 638. Affirmed. Int. Com. Com. v. Stickney, 215 U. S. 98, 54 L. Ed. 112, 30 Sup. Ct. 66. A mistake in quoting a published rate does not justify a deviation therefrom. Gulf, Col. & S. F. Ry. Co. v. Hefley, 158 U. S. 98, 39 L. Ed. 910, 15 Sup. Ct. 802; Texas & Pac. Ry. v. Mugg, 202 U. S. 242, 50 L. Ed. 1011, 26 Sup. Ct. 628; Texas & Pac. Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 444, 51 L. Ed. 553, 560, 561, 27 Sup. Ct. 350. Free cartage furnished openly and notoriously for a quarter of a century need not be stated prior to Act June 29, 1906, in absence of a requirement of the Commission therefor. Int Com. Com. v. Detroit, G. H. & M. Ry. Co., 167 U. S. 633, 42 L. Ed. 306, 17 Sup. Ct. 986. May under this section make a distinct charge for the terminal road when separately stated in tariffs. Int. Com. Com. v. Chicago, B. & Q. R. Co., 186 U. S. 320, 46 L. Ed. 1182. 22 Sup. Ct. 824. Nothing in section prevents the initial carrier from retaining the right to route freight. So. Pac. Co. v. Int. Com. Com., 200 U. S. 536, 50 L. Ed. 585, 26 Sup. Ct. 330. Rates are established when filed with Interstate Commerce Commission though not posted. Tex. & Pac. Ry. Co. v. Cisco Oil Mill, 204 U. S. 449, 51 L. Ed. 562, 27 Sup. Ct. 358.

**Notes of Decisions Rendered Since 1909.**

The purpose of this section is to secure to the public knowledge of the rates to be charged. Schultz-Hansen Co. v. S. P. Co., 18 I. C. C. 234, 237. Damages awarded for failure "plainly" to state tariff application. Larson Lumber Co. v. G. N. Ry. Co., 21 I. C. C. 474. Holding itself out as a common carrier may be assumed to be such. Interstate

Remedy Co. v. Am. Ex. Co., 16 I. C. C. 436; Crescent Coal & Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 156, 158. Regulations governing baggage required to be stated since amendment to Sec. 1 by Act June 18, 1910. Regulations Restricting the Dimensions of Baggage, 26 I. C. C. 292. Posting not a condition precedent to making schedules operative. Buren v. S. P. Co., 26 I. C. C. 332. Texas & Pacific Ry. Co. v. Cisco Oil Mill, 204 U. S. 449, 51 L. Ed. 562, 27 Sup. Ct. 358; Kansas City So. Ry. Co. v. Albers Com. Co., 223 U. S. 573, 594, 56 L. Ed. 556, 32 Sup. St. 316; United States v. Miller, 223 U. S. 599, 56 L. Ed. 568, 32 Sup. Ct. 323. Commission's power to modify provisions as to posting state. Franke Grain Co. v. I. C. R. Co., 27 I. C. C. 625, 629, modifying, Kiel Woodenware Co. v. C. M. & St. P. Ry. Co., 18 I. C. C. 242. "Integrity of through rate" defined in its application to section. Fabrication-in-transit Charges, 29 I. C. C. 70, 87. A shipper has a continued right in rates filed. Am. Sugar Refining Co. v. D. L. & W. R. Co., 207 Fed. 733, 125 C. C. A. 251, reversing same styled case, 200 Fed. 652. Failure to post tariffs no ground for recovery of damages. Ill. C. R. R. Co., v. Henderson Elevator Co., 226 U. S. 441, 57 L. Ed. 290, 33 Sup. Ct. 176. Stock Yards Transit Co. must file tariff. U. S. v. Union Stock Yards & Transit Co., 226 U. S. 286, 57 L. Ed. 226, 33 Sup. Ct. 83; modifying same styled case, 192 Fed. 330, Op. Com. Ct. No. 15 p. 189. Special arrangement for transporting men employed by Construction Co. legal. Santa Fe P. & P. R. Co. v. Grant Bros. Construction Co., 228 U. S. 177, 57 L. Ed. 787, 33 Sup. Ct. 474; reversing same styled case 13 Ariz. 186. 108 Pac. 467. Elkins law requires tariff to be observed. Hocking Valley Ry. Co. v. United States, 210 Fed. 735, 127 C. C. A. 285, affirming same styled case 194 Fed. 234; Sunday Creek Co. v. U. S., 210 Fed. 747. Applies to demurrage charges. U. S. v. Erie R. Co., 209 Fed. 283. Expedited service illegal when privilege not shown in tariff. Englemon v. Chicago, St. P., M. & O. Ry. Co., 210 Fed. 896; Chicago & A. R. Co. v. Kirby, 225 U. S. 155, 56 L. Ed. 1033, 32 Sup. Ct. 648. "In connection with" defined. Kansas City, So. Ry. Co. v. C. H. Albers Commission Co., 223 U. S. 573, 56 L.

Ed. 556, 32 Sup. Ct. 316. Charges must be paid in money. Louisville & N. R. Co. v. Mottley, 219 U. S. 467, 55 L. Ed. 297, 31 Sup. Ct. 265, 34 L. R. A. (N. S.) 671; Chicago I. & L. R. Co. v. United States, 219 U. S. 486, 55 L. Ed. 305, 31 Sup. Ct. 272. See notes 31 L. R. A. (N. S.) 657, 38 L. R. A. (N. S.) 357, 55 L. Ed. 305. Separate statement of terminal charges. Int Com. Com. v. Stickney, 215 U. S. 98, 54 L. Ed. 112, 30 Sup. Ct. 66.

Limitation of value in the tariff controls. Boston & M. R. Co. v. Hooker, 233 U. S. 97, 58 L. Ed. 868, 34 Sup. Ct. 526. Purpose of Section discussed. Hamlen & Sons Co. v. Ill. C. R. Co., 212 Fed. 324, citing Clegg v. St. L. & S. F. R. Co., 203 Fed. 971, 122 C. C. A. 273; C. C. & St. L. R. R. Co. v. Hirsch, 204 Fed. 849, 123 C. C. A. 145, to the effect that any contract imposing a more burdensomel liability than that stated in the tariffs is void. Points from and to which rates apply must be stated. Rates on Slag, 34 I. C. C. 337.

**Notes of Decisions Rendered Since 1915.**

Section discussed as to separation of charges for different services. Iron Ore Rate Cases. 41 I. C. C. 181, 203; American Paper & Pulp Asso. v. B. & O. R. R. Co., 41 I. C. C. 506, 512. Demurrage rates not given a retroactive effect. Horton v. Tonopah & Goldfield R. Co., 225 Fed. 406. Counter claim for damages to goods not allowed in suit for freight charges, Illinois C. R. Co. v. Hooper, 233 Fed. 135; Johnson Brown Co. v. D. L. & W. R. Co., 239 Fed. 590, 592. Contra. Wells Fargo & Co. v. Cuneo, 241 Fed. 727, 730. Lawful conditions of bills of lading filed with the Commission are as binding as tariffs. Boston & M. R. R. Co. v. Piper, 246 U. S. 439, 62 L. Ed. 820, 38 Sup. Ct. 354.

§ 359. **Regulations as to Printing and Posting Schedules of Rates for Freight Moving through Foreign Countries from and to Any Place in the United States.**—Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the

through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

Paragraph two of section six. Paragraph as originally enacted. For annotations see next preceding section.

Posting for public inspection is not essential to make effective tariff duly filed with the Commission. Berwind-White Coal Mining Co. v. C. & E. R. Co., 235 U. S. 371, 59 L. Ed. 275, 35 Sup. Ct. 131. Tariffs relating to import traffic. United States v. Grand T. R. Co., 225 Fed. 283.

§ 360. **No Change of Schedules of Rates Shall be Made without Notice.**—No change shall be made in the rates, fares, and charges, or joint rates, fares, and charges, which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules. or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: Provided, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting and filing tariffs, either in particular instances or by a general order applicable to special or peculiar cumstances or conditions:

"*Provided further*, That the Commission is hereby authorized to make suitable rules and regulations for the simplification of schedules of rates, fares, charges, and classifications and to permit in such rules and regulations the filing of an amendment of or change in any rate, fare, charge, or classification without filing complete schedules covering rates, fares, charges or classi-

fications not changed if, in its judgment, not inconsistent with the public interest.

Paragraph 3 of section 6 of Interstate Commerce Act as amended by Act June 29, 1906, and as further amended, by adding the last proviso, by Transportation Act 1920, section 410. For original Act see *post*, section 364.

For administrative rulings, see tariff circular 18-A. Time to be computed from day that notice reaches the office of Commission. Circular March 23, 1889, 2 I. C. C. 656. Export rates cannot be varied from day to day to meet fluctuation. New York Produce Ex. v. New York C. & H. R. R. Co., 3 I. C. C. 137, 2 I. C. R. 553.

**Notes of Decisions Rendered Since 1909.**

Section stated as to power of the Commission to modify the requirements. Franke Grain Co. v. I. C. R., 27 I. C. C. 625, 629.

Tariff Circular 18-A construed. Brown & Sons Lumber Co. v. L. & N. R. Co., 37 I. C. C. 507, 509.

§ 361. **Names of All Carriers Parties to Schedules Must Be Specified.**—The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

New paragraph of section six added by Act June 29, 1906, made Par. 4 by Transportation Act 1920.

Evidence of an agreement to a joint tariff should be a matter of record. Re Form and Contents of Rate Schedules. 6 I. C. C. 267, 279, 4 I. C. R. 698, 702. Joint rate can only be made by concurrence or assent. New York, N. H. & H. R. Co., v. Platt, 7 I. C. C. 323, 333.

For additional citations holding the schedule must be maintained as filed, see: Dayton Coal & Iron Co. v. C. N. O. & T. P. Ry. Co., 239 U. S. 446, cases cited 451, 60 L. Ed. 377, 36 Sup. Ct. 137.

§ 362. **Carriers Shall File Contracts Relating to Traffic Arrangements.**—Every common carrier subject to this act shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party.

Paragraph five of section six substantially as in original Act, the words "subject to this act" being added by Act June 29, 1906.

Contracts and agreements for joint rates must be filed. Tariff circular 18-A. So must carriers' contracts for telephone and telegraph service. Id. Express companies must file contracts for joint rates.

§ 363. **Commission May Prescribe Form of Schedules.**—The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged and may change the form from time to time as shall be found expedient.

Paragraph six, section six, of present Act, added March 2, 1889.

Tariff schedule 18-A is issued by the Interstate Commerce Commission under authority of this paragraph. Charges should be clearly and definitely stated so that the public can easily determine the rate. Colorado Fuel and Iron Co. v. So. Pac. Co., 6 I. C. C. 488, 518.

This is an administrative function of the Commission. Norfolk & S. R. Co. v. Chatman, 244 U. S. 276, 61 L. Ed. 1131, 37 Sup. Ct. 499.

§ 364. **No Carrier Shall Participate in Interstate Commerce Unless the Charges Therefor Are Published, and No Such Carrier Shall Deviate from the Published Schedules.**—No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property, as defined in this act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service

act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs or rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem practicable for such common carriers to publish, and the places in which they shall be published; but no common carrier party to any such joint tariff shall be liable for the failure of any other common carrier party thereto to observe and adhere to the rates, fares, or charges thus made and published.

"If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated or wherein such offense may be committed, and if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the commissioners appointed under the provisions of this act; and failure to comply with its requirements shall be punishable as and for a contempt; and the said commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several states and territories of the United States, or between the United States and

adjacent foreign countries, or between ports of transshipment and of entry and the several states and territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act."

Section six of the Act of March 2, 1889 read:

"That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares and charges. Such schedules shall be plainly printed in large type, and copies, for the use of the public shall be posted in two public, and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

"Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed:

"No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

"And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

"Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the

Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem practicable for such common carrier to publish and the places in which they shall be published.

"No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedules then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practical, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

"It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon, than is specified in the schedule filed with the Commission in force at the time.

"The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

"If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the afore-

said provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the commissioners appointed under the provisions of this act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several states and territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several states and territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act."

See annotations, *supra*, under other paragraphs of section six of the Act to Regulate Commerce.

Reductions in passenger rates should not be made without a change showing such reductions in the tariffs. Re Passenger Tariffs and Rate Wars, 2 I. C. C. 513, 2 I. C. R. 340. When no joint rates are published, the combination of the locals is the legal rate. Re Passenger Tariffs, 2 I. C. C. 649, 2 I. C. R. 445; Lehman, Higginson & Co. v. Tex. & Pac. R. Co., 5 I. C. C. 44, 3 I. C. R. 706. A carrier must collect its local rate unless it has joined in a joint tariff. New York, N. H. & H. R. Co. v. Platt, 7 I. C. C. 323. All rules and regulations affecting rates should show on the tariffs. Spillers & Co. v. L. & N. R. Co., 8 I. C. C. 364. Tariffs cannot be given a retroactive effect. Re Through Routes and Through Rates, 12 I. C. C. 163. Mistake of agent in giving rate will not justify deviation from tariff rate. Poor Grain Co. v. C., B. & Q. Ry. Co., 12 I. C. C. 418, 421 and 469, citing Gulf, C. & S. F. Ry. Co. v. Hefley, 158 U. S. 98, 39 L. Ed. 910, 15 Sup. Ct. 802; Tex. & Pac. Ry. Co. v. Mugg, 202 U. S. 242, 50 L. Ed. 1011, 26 Sup. Ct. 628. The through rate shown by the tariff is the lawful rate for a through shipment, although the combination of locals is less. Morgan v. M. K. & T. Ry. Co., 12 I. C. C. 525. Section construed and statement made of what an indictment for its violation should contain. United States v. Penn. R. Co., 153 Fed. 625; United States v. New York C. & H. R. R. Co., 153

Fed. 630. Act not unconstitutional because published rate fixed as legal rate. United States v. Standard Oil Co., of Indiana, 155 Fed. 305. Reversed on other grounds. Standard Oil Co. of Indiana v. United States, 164 Fed. 376; see also United States v. Vacuum Oil Co., 158 Fed. 536.

**Notes of Decisions Rendered Since 1909.**

A published rate is the legal rate, although it may not be lawful. See distinction. Arkansas Fuel Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 95, 97. A rate is the legal rate even though not "posted." U. S. v. Miller, 223 U. S. 599, 56 L. Ed. 568, 32 Sup. Ct. 323, reversing, U. S. v. Miller, 187 Fed. 369 and 375.

**Notes of Decisions Rendered Since 1915.**

Unlawful under this section to refuse to seil a Commutation Ticket to one who misused a former ticket. New York Commutation Fares 42 I. C. C. 354, 356. No allowance not provided for in a legal tariff can be recovered by suit in court. Southern Cotton Oil Co. v. Cent. of Ga. Ry. Co., 228 335. No through rate here and statute not violated. United States v. P. & R. Ry. Co., 232 Fed. 946. An indictment showing all necessary facts. United States v. P. & R. Ry. Co., 232 Fed. 953. An intrastate rate not filed with the Commission cannot be used in making a through interstate rate. Ala. G. S. v. McFadden & Bros., 232 Fed. 1000, 241 Fed. 562. The tariff has a force similar to a statute. Moore v. Duncan, 237 Fed. 780. A tariff applicable during specified months called a "Seasonal Tariff." Toledo & O. C. Ry. Co. v. Chesapeake & O. Coal & Coke Co., 238 Fed. 629. Dismissed in Supreme Court, 249 U. S. —, 63 L. Ed. —, 39 Sup. Ct. —. Prior to Transportation Act 1920 there was no Federal Statute of limitations for suits for undercharges and the local state statutes controlled. Chicago & N. W. Ry. Co. v. Ziebarth, 245 Fed. 334. A shipper may so assemble or disassemble his goods as to take the lowest rate. Lakewood Engineering Co. v. N. Y. C. R. Co., 259 Fed. 61, — C. C. A. —. Railroads cannot pay commissions out of the rates to get business. Lehigh V. R. Co. v. United States, 243 U. S. 444, 61 L. Ed. 839, 37 Sup. Ct. 397.

§ 365. **Preference and Precedence May Be Given Military Traffic in Time of War.**—That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic.

A new paragraph, paragraph eight, added to section six by Act June 29, 1906.

See Federal Control Act, Appendix 1, *post*.

§ 366. **The Commission May Reject Schedules.**—The Commission may reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Commission shall be void and its use shall be unlawful.

A new provision added to Sec. 6 by Act of June 18, 1910, being paragraph 9 of section 6 as numbered by Transportation Act 1920.

§ 367. **Penalty for Failure to Comply with Orders Under Section Six.**—In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the Commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

A new provision added to Sec. 6 by Act of June 18, 1910, being paragraph 10 of section 6 as numbered by Transportation Act 1920.

§ 368. **Penalty for Misstating or Failure to State Rate.**—If any common carrier subject to the provisions of this act, after written request made upon the agent of such carrier hereinafter in this section referred to, by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse

or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through entering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

A new provision added by Act June 18, 1910, being paragraph 11 of section 6 as numbered by Transportation Act 1920. This section does not, in its practical working, protect shippers. Utah Wholesale Grocery Co. v. N. & W. Ry. Co., 39 I. C. C. 345, 346. And see Section 212, *ante*.

§ 369. **Must Post Name of Agent.**—It shall be the duty of every carrier by railroad to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name so posted in any station, it shall be sufficient to address such request in substantially the following form: "The Station Agent of the ——— Company at ——— Station," together with the name of the proper post office, inserting the name of the carrier company and of the station in the blanks, and to serve the same by depositing the request so addressed, with postage thereon prepaid, in any post office.

A new provision added to Section 6 by Act June 18, 1910, being paragraph 12 of section 6 as numbered by Transportation Act 1920.

§ 370. **Corporations Violating the Act to Regulate Commerce Guilty as Individuals and Punishment Prescribed.**—That any-

thing done or omitted to be done by a corporation common carrier, subject to the act to regulate commerce and the acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said acts or under this act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said acts or by this act with reference to such persons, except as such penalties are herein changed. The wilful failure upon the part of any carrier subject to said acts to file and publish the tariffs of rates and charges as required by said acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense.

First part of section one, Act February 19, 1903, known as the "Elkins Act."

This and sections 371, 372, 373 and 374 while not parts of section 6, logically follow at this point.

Prior to this act only the agents of the corporations could be guilty of criminal offenses against the Act to Regulate Commerce. United States v. Milwaukee Refrigerator Transit Co., 142 Fed. 247, 249. A carrier and its agents may be prosecuted under the same indictment. United States v. New York C. & H. R. R. Co., 146 Fed. 298. Affirmed by the Supreme Court, holding that the act was not unconstitutional in imputing to a corporation a criminal offense. New York C. & H. R. R. Co. v. United States, 212 U. S. 481, 53 L. Ed. 613, 29 Sup. Ct. 304.

**Notes of Decisions Rendered Since 1909.**

Failure to observe the tariff rate by carrying a less or different rate than stated therein is punishable. Hocking Valley Ry. Co. v. U. S., 210 Fed. 735, 127 C. C. A. 285, affirming U. S. v. Hocking Valley Ry. Co., 194 Fed. 234. The violation of the tariff in this case was the extension of credit to shippers for freight due.

§ 371. **Rebate. Punishment for Offering, Granting, Soliciting or Accepting.**—And it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept or receive any rebate, concession, or discrimination in respect (to) the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory (thereof) whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory (thereof,) or whereby any other advantage is given or discrimination is practiced. Every person or corporation (whether carrier or shipper) who shall, (knowingly), offer, grant, or give, or solicit, accept, or receive any such rebates, concessions or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: (Provided, That any person, or any officer or director of any corporation subject to the provisions of this act, or the act to regulate commerce and the acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court). Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

Second part of section one of Act February 19, 1903, substantially as enacted, the amendments of June 29, 1906, being inclosed in brackets. The part of the original Act stricken by the amended Act was as follows.

"In all convictions occurring after the passage of this act for offenses under said acts to regulate commerce, whether committed before or after the passage of this act, or for offenses under this section, no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed as part of the penalty being hereby abolished."

Before the passage of the Elkins law it was held that as the question of whether or not the facts and circumstances constituted unjust or illegal discrimination must be left to a jury there could be no certainty as to whether or not a particular act was criminal, and, therefore, there could be no criminal punishment for violating section three of the Act. Tozer v. United States, 52 Fed. 917. But a conviction against an agent of a carrier could be had under section ten for transporting for less than the published rate. United States v. Mich. Cent. R. Co., 43 Fed. 26. No conviction for receiving a rebate from a joint rate not filed and published. United States v. Wood, 145 Ala. 405. A consignee may be guilty as well as a consignor. The Hepburn Act did not affect offenses committed prior to its passage. United States v. Standard Oil Co., 148 Fed. 719. 155 Fed. 305. Reversed on other grounds. Standard Oil Co. v. United States, 164 Fed. 376, 90 C. C. A. 364. See also that offenses not affected by section ten of the Hepburn Act. United States v. Chicago, St. P., M. & O. Ry. Co., 151 Fed. 84; United States v. New York C. & H. R. R. Co., 153 Fed. 630. Offenses hereunder may be prosecuted by information. United States v. Camden Iron Works, 150 Fed. 214. Reversed, 158 Fed. 561, 85 C. C. A. 585, because the initial carrier which paid the rebate had filed no through schedule of rates with the Commission. A shipment from one point to another in New York state but passing through another state is interstate commerce and subject to this law. Also holding that section ten of Hepburn law did not affect prosecution for offenses committed prior thereto. United States v. Delaware, L. & W. R. Co., 152 Fed. 269. Death before the fine is paid abates the judgment. United States v. Pomeroy, 152 Fed. 279. Reversed, because the circuit court had no power to act, an appeal having been taken. United States v. New York C. & H. R. R. Co., 164 Fed. 324, 90 C. C.

A. 256. Act constitutional. Crime may be punished in any district through which the transportation is conducted. Contract to maintain established rates ineffective after a higher rate has been filed and published. Armour Packing Co. v. United States, 153 Fed. 1, 82 C. C. A. 135, 14 L. R. A. (N. S.) 400. Affirmed. 209 U. S. 56, 52 L. Ed. 681, 28 Sup. Ct. 428. See note to law edition. Section not restricted to departures from tariff rates, but act applies to all illegal discriminations. United States v. Vacuum Oil Co., 153 Fed. 598. Defective indictments for discrimination. United States v. B. & O. R. Co., 153 Fed. 997. The extent stated to which section one of Elkins Act was repealed by Hepburn Act. Great northern Ry. Co. v. United States, 155 Fed. 945. Affirmed, holding that the right to prosecute for an offense committed prior to the Hepburn law was not taken away by that law. Great N. R. Co. v. United States, 208 U. S. 452, 52 L. E. 567, 28 Sup. Ct. 313. Same effect and holding Act not unconstitutional. United States v. Great N. R. Co., 157 Fed. 288. Where tariff filed by another no crime. United States v. New York C. & H. R. R. Co., 157 Fed. 293. Act not unconstitutional and applies to a carrier wholly within a state when it joins in the published through rate. United States v. Vacuum Oil Co., 158 Fed. 536. Act applies to express companies. The failure to use the word "unjust" before "discrimination" in new Act does not broaden effect of Act as amended. United States v. Wells Fargo Ex. Co., 161 Fed. 606. Applies to refunding elevator charges when no provision in tariff therefor. Chicago, St. P., M. & O. Ry. Co. v. United States, 162 Fed. 835. No defense that rebate granted in compromise of claims for loss of property in transit. United States v. A. T. & S. F. Ry. Co., 163 Fed. 111. Each shipment upon which a rebate is actually paid, regardless of its size, is a separate offense. No crime unless and until payment is made. Standard Oil Co. of Indiana v. United States, 164 Fed. 376, 90 C. C. A. 364. Each rebate payment, regardless of number of shipments, constitutes a separate offense; not decided whether or not each separate agreement to pay a rebate would constitute an offense. United States v. Stearns Salt & Lumber Co., 165 Fed. 735. Each payment, although covering more than one shipment, constitutes one and only one offense. United States v. Bunch,

165 Fed. 736. Prosecution for failure to file schedules must be at Washington, D. C. "Rates in force" defined. New York C. & H. R. R. Co. v. United States, 166 Fed. 267, 92 C. C. A. 331, reversing 153 Fed. 630. The device by which a rebate is granted is illegal even though not secret or fraudulent. Violations may be tried in any district through which the transportation is had. Armour Packing Co. v. United States, 209 U. S. 56, 52 L. Ed. 681, 28 Sup. Ct. 428; Chicago, B. & Q. R. Co. v. United States, 209 U. S. 90, 52 L. Ed. 698, 28 Sup. Ct. 439. Where full rate is paid and rebate granted at intervals, upon claims being filed therefor, each rebate payment constitutes a separate offense. New York C. & H. R. R. Co. v. United States, 212 U. S. 481, 498, 53 L. Ed. 613, 29 Sup. Ct. 304. Same style case, 212 U. S. 500, 53 L. Ed. 624, 29 Sup. Ct. 304. A party to a joint rate, though not filed and published by it, may be guilty. United States v. New York C. & H. R. R. Co., 212 U. S. 509, 53 L. Ed. 629, 29 Sup. Ct. 313. Where the shipper pays the legal rate and at intervals receives a rebate, each payment thereof is a separate offense. New York C. & H. R. R. Co. v. United States, 212 U. S. 481, 53 L. Ed. 613, 29 Sup. Ct. 304.

Rate collected under contract made before tariff filed and different from tariff rate illegal. Armour Packing Co. v. United States, 209 U. S. 56, 52 L. Ed. 681, 28 Sup. Ct. 428.

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"Rebate" defined.: Am. Sugar Refining Co. v. Delaware, L. & W. R. Co., 207 Fed. 733, 125 C. C. A. 251. Reversing same styled case, 200 Fed. 652. Extending credit to shippers illegal. Hocking Valley Ry. Co. v. U. S., 210 Fed. 735, affirming, U. S. v. Hocking Valley Ry. Co., 194 Fed. 234; Sunday Creek Co. v. U. S., 210 Fed. 747, affirming U. S. v. Sunday Creek Co., 194 Fed. 752. Whether a particular payment is legal must be determined as of the date of the service. Elwood Grain Co. v. St. Joseph & G. I. Ry. Co., 202 Fed. 845, 121 C. C. A. 153. Violation of transit rules and form of indictment discussed. Grand Rapids & I. Ry. Co. v. U. S., 212 Fed. 577. Contract for expedited service not provided for in tariff illegal. Chicago & A. R. Co. v. Kirby, 225 U. S. 155, 56 L. Ed. 1033, 32 Sup. Ct. 648. When two

lumber manufacturing companies use the same railroad, owned by one of them, the one not owning the railroad cannot participate in divisions allowed such carrier. Fourche River Lumber Co. v. Bryant Lumber Co., 230 U. S. 816, 57 L. Ed. 1498, 33 Sup. Ct. 887, reversing Bryant Lumber Co. v. Fourche River Lumber Co., 97 Ark. 623, 135 S. W. 796.

A shipper cannot be convicted of accepting a rate less than the published rate when the true rate is unknown, a fine of $29,240,000 set aside. Standard Oil Co. of Ind. v. U. S., 164 Fed. 376, 90 C. C. A. 364, reversing U. S. v. Standard Oil Co., 155 Fed. 305. Refund of elevator charges. Wisconsin C. Ry. Co. v. U. S., 169 Fed. 76, 94 C. C. A. 444.

Intent of the carrier is the essence of the offense. A. T. & S. F. Ry. Co. v. U. S., 170 Fed. 250, 95 C. C. A. 446, reversing U. S. v. A. T. & S. F. Ry. Co., 163 Fed. 111.

Each payment of freight one offense. U. S. Standard Oil Co., 170 Fed. 988. Case distinguished and each shipment held the unit. U. S. v. Standard Oil Co. of N. Y., 192 Fed. 438. The question is discussed and the conclusion reached that each shipment is a separate offense. Grand Rapids & I. Ry. Co. v. U. S., 212 Fed. 577, 587, 129 C. C. A. 113. Allegations in indictment sufficient. Standard Oil Co. of N. Y. v. U. S., 179 Fed. 614, 103 C. C. A. 172. No violation of the statute under the facts here shown. U. S. v. Standard Oil Co. of Ind., 183 Fed. 223. Whether a rebate or a settlement of a valid claim a question for the jury. Lehigh Valley R. Co. v. U. S., 188 Fed. 879, 110 C. C. A. 513, affirming U. S. v. P. & R. Ry. Co., 184 Fed. 543; U. S v. Bethlehem Steel Co., 184 Fed. 546; U. S. v. Lehigh Valley R. Co., 184 Fed. 546. Posting necessary. U S. v. Miller, 187 Fed. 375, reversed holding *contra* U. S. v. Miller, 223 U. S. 599, 56 L. Ed. 568, 32 Sup. Ct. 323. That a rate not intended to apply no defense. Merchants & Miners Transportation Co. v. U. S., 199 Fed. 902. Indictment for fraudulently obtaining transportation at an illegal rate. U. S. v. Sterling Salt Co., 200 Fed. 593. No variance under the facts here. Grand Rapids & I. R. Co. v. U. S., 212 Fed. 577 and 589. Nichols & Cox Lumber Co. v. U. S., 212 Fed. 588. A common carrier may not grant special favors. Johnson v. N. Y., N. H. & H. R. Co., 111 Me. 263, 88 Atl. 988. Not a rebate to compensate a shipper for serv-

ices rendered or instrumentalities furnished. U. S. v. B. & O. R. Co., 231 U. S. 274, 58 L. Ed. 218, 34 Sup. Ct. 75. The filed tariffs must be taken notice of by shippers and must be adhered to. A. T. & S. F. Ry. Co. v. Robinson, 233 U. S. 173, 58 L. Ed. 901, 34 Sup. Ct. 556. Great No. Ry. Co. v. O'Connor, 232 U. S. 508, 58 L. Ed. 703, 34 Sup. Ct. 380. Payment to freight forwarder a rebate. Waters-Pierce Oil Co. v. United States, 222 Fed. 69, 137, C. C. A. 293. May be rebate although part of through movement in Canada. United States v. Grand Trunk R. Co., 225 Fed. 283.

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Any departure from the tariff whether discriminatory or not is unlawful. Vandalia R. Co. v. United States, 226 Fed. 713, 141 C. C. A. 469; Davis v. So. Pac. Co., 235 Fed. 731. However, payments although stated in the tariffs, which are not authorized by the statute are unlawful. Cent. R. Co. of N. J. v. United States, 229 Fed. 501, 143 C. C. A. 569. Form of Indictment of a Corporation. United States v. C. C. C. & St. L. Ry. Co., 234 Fed. 178. Any pecuniary inducement unlawful. Northern C. Ry. Co. v. United States, 241 Fed. 25, 154 C. C. A. 25, petition for Certiorari denied, 245 U. S. 645. The mere offer to pay a rebate is unlawful. United States v. Lehigh V. R. Co., 254 Fed. 332. "Shipper" defined and indicted. United States v. Metropolitan Lumber Company, 254 Fed. 335. Cannot lawfully make retroactive provisions of tariffs authorizing refund of switching charges. Penn. Co. v. United States, 257 Fed. 261, — C. C. A. —. This section does not prevent the recovery of damages. Penn. R. Co. v. Olivit Bros., 243 U. S. 574, 61 L. Ed. 908, 37 Sup. Ct. 468.

§ 372. **Act of Officer or Agent, When Binding.**—In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person.

Second paragraph of section one of the original Elkins Act, except the Act of June 29, 1906, added the words "or shipper" after "carrier" where it occurs.

Because the act of the agent is the act of the corporation, both may be included in one indictment. New York C. & H. R. R. Co. v. United States, 212 U. S. 481, 53 L. Ed. 613, 29 Sup. Ct. 304.

§ 373. **Carrier Filing or Participating in Rate Bound Thereby.**—Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the act to regulate commerce or acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this act.

Part of second paragraph of section one Elkins Act, as originally exacted, except "thereof" was substituted for "thereto," in the Act of June 29, 1906.

Section applied in a prosecution for rebating. U. S. v. New York C. & H. R. Co., 212 U. S. 509, 53 L. Ed. 629, 29 Sup. Ct. 313.

§ 374. **Forfeiture for Rebating in Addition to Penalties. Limitation of Six Years Fixed.**—Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this act, or for whom, as consignor or consignee, any such carrier shall transport property from one state, territory, or the District of Columbia, to any other state, territory or the District of Columbia; or foreign country, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this act, shall in addition to any penalties provided by this act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial

court; and the Attorney-General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

New provision added to section one, Elkins Act, by Act June 29, 1906.

§ 375. **Jurisdiction Over Water Carriers.**—When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single state, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the act to regulate commerce, as amended June eighteenth, nineteen hundred and ten:

Part of Panama Canal Act. Act Aug. 24, 1912, being section 11 of that Act, first part of paragraph 13 of section 6 of Interstate Commerce Act as numbered by Transportation Act 1920.

Through route with water carrier established and section discussed. Augusta & Savannah Steamboat Co. v. O. S. S. Co., 26 I. C. C. 380. Power of the Commission under the section stated. Wharfage Facilities at Pensacola, Fla., 27 I. C. C. 252, 257. Boat lines upon meeting all reasonable requirements are entitled to the establishment of through routes and joint rates. Truckers' Transfer Co. v. C. & W. C. Ry. Co., 27 I. C. C. 275. "Any proper development that will

open our water ways to the use of the public should be encouraged.'' Lumber Rates, Oregon and Washington to Eastern Points, 29 I. C. C. 609, 619. Through routes and joint rates established with water carriers. Tampa Board of Trade v. L. & N. R. Co., 30 I. C. C. 377; Decatur Navigation Co. v. L. & N. R. Co., 31 I. C. C. 281; Bowling Green Protective Ass'n v. E. & B. G. P. Co., 31 I. C. C. 301, 306. Through routes and joint rates established with rail carrier, although such carrier had rails the whole length of the route, the Commission saying, ''The spirit of the act to regulate commerce is to maintain the freedom of our ports and to allow boat lines to engage in traffic upon equal terms.'' Pacific Navigation Co. v. S. P. Co., 31 I. C. C. 472; Transcontinental Commodity Rates, 31 I. C. C. 449; Tampa Board of Trade v. A. & V. R. Co., 33 I. C. C. 457; Federal Sugar Refining Co. v. C. of N. J. R. Co., 35 I. C. C. 488.

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These annotations apply to this and sections 376 to 380 inclusive. A boat line must be ready to perform its functions before through routes and proportional rates will be accorded. Charleston & Norfolk S. S. Co. v. C. & O. Ry. Co., 40 I. C. C. 382, 47 I. C. C. 365. For a comprehensive discussion of this and the following five sections, showing that the Transportation Act 1920 largely adopted what the Commission had already decided, see Baltimore & Carolina S. S. Co. v. A. C. L. R. Co., 49 I. C. C. 176. Further construing these sections. Colonial Nav. Co. v. N. Y. N. H. & H. R. Co., 50 I. C. C. 625, 628-630; Decatur Nav. Co. v. L. & N. R. Co., 31 I. C. C. 281; Chattanooga Packet Co. v. I. C. R. Co., 33 I. C. C. 384; Inland Nav. Co. v. Wabash Ry. Co., 43 I. C. C. 588; Gulf Atlantic S. S. Co. v. A. C. L. R. Co., 46 I. C. C. 309.

§ 376. **Physical Connection Between Rail Lines and Dock of Water Carriers.**—To establish physical connection between the lines of the rail carrier and the dock at which interchange of passengers or property is to be made by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of the railroad right of way, or by directing either

or both the rail and water carrier, individually or in connection with one another, to construct and connect with the lines of the rail carrier a track or tracks to the dock. The Commission shall have full authority to determine and prescribe the terms and conditions upon which these connecting tracks shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier: Provided, That construction required by the Commission under the provisions of this paragraph shall be subject to the same restrictions as to findings of public convenience and necessity and other matters as is construction required under section 1 of this Act.

Sub paragraph a of paragraph 13 of section 6 of Interstate Commerce Act as amended by section 412 of Transportation Act 1920. Where in this section it reads "the dock at which interchange of passengers or property is to be made," the old law read "and the dock of the water carrier." See 49 I. C. C. 176 section next *supra*. "The railroad" in fifth line of new text is substituted for "its" in old law; "spur" before track in old law is omitted in the amended statute. In the old section it was said: "This provision shall only apply where such connection is reasonably practicable, can be made with safety to the public and where the amount of business to be handled is sufficient to justify the outlay." This proviso is omitted. "When constructed" before "shall be operated" is omitted. The proviso to the amended section is new and there is omitted from the old section the following: "The provisions of this paragraph shall extend to cases where the dock is owned by other parties than the carrier involved."

Except as to the point of interchange at the dock nothing material is added by the amendment. For annotations see section 375, *supa*.

§ 377. **Through Routes and Joint Rates between Rail and Water Carriers.**—To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced.

Paragraph 4 of Panama Canal Act amending Sec. 6 of original Act, being sub paragraph b of paragraph 13 of section 6 as numbered by Transportation Act 1920. For annotations see section 375, *supra*.

§ 378. **Proportional Rates to and from Ports.**—To establish proportional rates, or maximum, or minimum, or maximum and minimum proportional rates, by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

Sub paragraph c of paragraph 13 of section 6 as amended by section 413 of Transportation Act 1920. The change from the former section is by adding "minimum or maximum and minimum." For annotations see section 375, *supra*.

§ 379. **Through Rates via Panama Canal.**—If any rail carrier subject to the act to regulate commerce enters into arrangements with any water carrier operating from a port in the United States to a foreign country, through the Panama Canal or otherwise, for the handling of through business between interior points of the United States and such foreign country, the Interstate Commerce Commission may require such railways to enter into similar arrangements with any or all other lines of steamships operating from said port to the same foreign country.

Part of paragraph 13 section 11 of Panama Canal Act being sub paragraph d of paragraph 13 of section 6 of Interstate Commerce Act as numbered by Transportation Act 1920. For annotations see section 375, *supra*.

§ 380. **Conditions under Which Through Routes and Joint Rates with Water Carriers May Be Operated to Be Prescribed by the Commission.**—The orders of the Interstate Commerce Commission relating to this section shall only be made upon formal complaint or in proceedings instituted by the Com-

mission of its own motion and after full hearing. The orders provided for in the two amendments to the act to regulate commerce enacted in this section shall be served in the same manner and enforced by the same penalties and proceedings as are the orders of the Commission made under the provisions of section fifteen of the act to regulate commerce, as amended June eighteenth, nineteen hundred and ten, and they may be conditioned for the payment of any sum or the giving of security for the payment of any sum or the discharge of any obligation which may be required by the terms of said order.

This section in order is paragraph 14 of section 6 as amended by Panama Canal Act, paragraph 7 of section 11. The Transportation Act 1920 gives numbers to five paragraphs of section 6 but makes no reference to this provision. The section is not repealed and must be read with section 376, *supra* and section 400 *post*.

§ 381. **Contracts and Combinations to Prevent Continuous Carriage of Freight Prohibited.**—That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or

Section seven of the original Act to Regulate Commerce.

An injunction may be granted to prevent a carrier and its employees from refusing to receive passengers and commodi-

to evade any of the provisions of this act.

ties from a connecting line. Toledo, A. A. & N. M. Ry. Co. v. Penn. Co., 54 Fed. 730, 746, 19 L. R. A. 387, 5 I. C. C. 545, 22 U. S. App. 561.

**Notes of Decisions Rendered Since 1909.**

Stopping oil in pipe lines at state lines held under the facts to violate section. Re Pipe Lines, 24 I. C. C. 1, 7. For history of this case see Prairie Oil & Gas Co. v. U. S., Pipe Line case, 204 Fed. 798, Op. Com. Ct. Nos. 75-80, p. 545; U. S. v. Ohio Oil Co., 234 U. S. 548, 58 L. Ed. 1394, 34 Sup. Ct. 956. Carload freight should not be required to be unloaded at points of connection between different carriers. St. L. S. & P. R. Co. v. P. & P. N. Ry. Co., 26 I. C. C. 226, 234; Louisville Board of Trade v. L. C. & S. T. Co., 27 I. C. C. 499, 506.

**Notes of Decisions Rendered Since 1915.**

Prohibition of sending cars beyond the lines of owning carrier unlawful. Car Supply Investigation 42 I. C. C. 657, 662, 671, 673.

§ 382. **Damages and Attorneys Fees Allowed for Violations.**—That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed asd collected as part of the costs in the case.

Section eight of original Act. For annotations see next succeeding section.

§ 383. **Where to Sue for Damages, Compulsory Attendance of Witnesses and Production of Papers.**—That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or

persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Section nine of the original Act.

Sections eight and nine are so related that the annotations herein apply to each. There are many cases, formal and informal, awarding reparation without announcing any rule or principle. These are not sufficiently important to be cited.

The commission cannot award damages for failure to furnish cars, an action therefore must be brought in a case at common law. Heck v. East Tenn., Va. & Ga. Ry. Co., 1 I. C. C. 495, 1 I. C. R. 755; Riddle v. New York, L. E. & W. R. Co., 1 I. C. C. 594, 1 I. C. R. 787. These cases were decided before the amendment to section sixteen by Act March 2, 1889, and since said amendment are not followed. Rawson v. Newport N. & M. V. R. Co., 3 I. C. C. 6, 2 I. C. R. 626; MacLoon v. Chicago & N. W. R. Co., 5 I. C. C. 84, 3 I. C. R. 711.

When a shipper gives instructions as to how his freight shall be routed, a violation of said instructions to his injury authorizes a recovery of the damage sustained. Pankey v. Richmond & D. R. Co., 3 I. C. C. 658, 3 I. C. R. 33; Rea v. M. & O. R. Co., 7 I. C. C. 43. But if no instructions are given, carrier may route. Dewey Bros. Co. v. B. & O. R. Co., 11 I. C. C. 481. But carrier must forward shipments with due regard to rights of shipper, and upon failure to do so, reparation allowed. Hennepin Paper Co. v. N. Pac. Ry. Co., 12 I. C. C. 535. These sections with reference to reparation show an intention upon the part of Congress to give the Commission power to fix rates. Perry v. Florida C. & P. R. Co., 5 I. C. C.

97, 3 I. C. R. 740, 746, citing a large number of cases in which the Commission had fixed reasonable rates. A money order for reparation may issue against a receiver of a carrier. Loud v. South Carolina R. Co., 5 I. C. C. 529, 4 I. C. R. 205. Rate reduced, but, under the circumstances of the case, reparation denied. James & Abbott v. Canadian Pac. R. Co., 5 I. C. C. 612, 4 I. C. R. 274, 283. Remedy for damages caused by delay, rotting, or other deterioration, or damage, not caused by violation of the Act is in the Courts. Duncan v. A. T. & S. F. R. Co., 6 I. C. C. 85, 4 I. C. R. 385. Each carrier participating in an overcharge is liable for the amount thereof, and when an association complains against a rate, each of its members at the time of the hearing is entitled to reparation. Indepenndent Refiners' Asso. v. Western New York & Penn. R. Co., 6 I. C. C. 378, 384. Order not enforced. Western New York & Penn. R. Co. v. Penn. Refining Co., 137 Fed. 343. A supplemental petition praying reparation filed two and a half years after an order declaring a rate illegal, dismissed. Rice, etc.. v. Western N. Y. & Penn. R. Co., 6 I. C. C. 455. A discriminatory rate, though itself reasonable, justifies an order of reparation. Board of Trade of Lynchburg v. Old Dominion S. S. Co., 6 I. C. C. 632, 645. Order of reparation must be based on evidence that rate was unreasonable when paid. Grain Shippers' Asso. v. Ill. Cent. R. Co., 8 I. C. C. 158. Remedy by way of damages for unlawful rate is entirely inadequate and inconsistent. McGrew v. Mo. Pac. Ry. Co., 8 I. C. C. 630, 642. Rates reduced but reparation denied. Johnson v. Chicago, St. P. M. & O. R. Co., 9 I. C. C. 221, 244. Shipments owned by several parties may be made under one bill of lading in the name of one consignor to one consignee at carload rates. Buckeye Buggy Co. v. Cleveland, etc., Ry. Co., 9 I. C. C. 626; California Com. Asso. v. Wells Fargo Ex. Co., 14 I. C. C. 422; Export Shipping Co. v. Wabash R. Co., 14 I. C. C. 437. Sections constitutional, as trial by jury may be had when order of Commission sued on. Cattle Raisers' Asso. v. Chicago, Burlington & Q. R. Co., 10 I. C. C. 83. The measure of damages is the difference between what should have been paid and what was exacted. Where a shipper pays less than he should with the consent of the carrier, the carrier can not recover the remainder of the lawful rate. Gardner v.

So. Ry. Co., 10 I. C. C. 342, 350, 351. When complainants refused to buy ties because of a failure of a carrier to furnish cars, they could recover the profit they would have made had they bought the ties and been enabled to ship them. **Paxton** Tie Co. v. Detroit S. R. Co., 10 I. C. C. 422, 426. Such failure to furnish cars must constitute discrimination and the proof of damages must be clear. Richmond Elevator Co. v. Pere Marquette R. Co., 10 I. C. C. 629, 636. When a combination of locals was less than the through rate and a carrier refused to let a shipper ship so as to use the two locals, the shipper- could recover reparation on all local shipments. Hope Cotton Oil Co. v. Tex. & Pac. Ry. Co., 10 I. C. C. 696. Right not barred by pending suit in state court, otherwise if suit was pending in a Federal court. Gallogly v. Cincinnati, H. & D. Ry. Co., 11 I. C. C. 1, 9. After decision as to rate retained for futher proceedings as to reparation. Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co., 11 I. C. C. 277. Profits may be recovered for discrimination, but reparation is not measured by the probability of profit. Eaton v. Cincinnati, H. & D. Ry. Co., 11 I. C. C. 619, 626. Reparation allowed only from date complainant wrote a letter to Commission complaining of rate. Texas Cement Plaster Co. v. St. L. & S. F. R. Co., 12 I. C. C. 68, 73. Reparation for breach of contract for a privilege not in the tariff cannot be allowed. Sheil & Co. v. Ill. Cent. R. Co., 12 I. C. C. 210. Claim for reparation should be made in original complaint. Dallas Freight Bureau v. Gulf, C. & S. F. Ry. Co., 12 I. C. C. 223. For detriment to business directly and proximately resulting from disadelphia & R. R. Co., 12 I. C. C. 308. Cannot recover because a crimination, reparation may be awarded. Rogers & Co. v. Philrate less than the tariff is quoted and relied upon. Poor v. Chicago, B. & Q. R. Co., 12 I. C. C. 418, 423, 469. Reparation does not follow reduction of rate as a matter of course. Farmers' Warehouse Co. v. L. & N. R. Co., 12 I. C. C. 457. Paper rate not a basis for reparation. Mo. & Kans. Shippers' Assn. v. M. K. & T. Ry. Co. 12 I. C. C. 483. The mere fact that a charge is discontinued or a rate reduced will not require the granting of reparation. Leonard v. Chicago, M. & St. P. Ry. Co., 12 I. C. C. 492. Reparation not allowed when a through rate in excess of the locals is paid on a through

shipment. Morgan v. M. K. & T. Ry. Co., 12 I. C. C. 525. Shippers by reshipping may take advantage of the locals less than the through rate. Laning-Harris Coal & Grain Co. v. Mo. Pac. Ry. Co., 13 I. C. C. 154. When shippers designate the route, they are not entitled to reparation because there was a cheaper route. Stedman v. Chicago & N. W. Ry. Co., 13 I. C. C. 167; William Larsen Canning Co. v. Chicago, & N. W. Ry. Co., 13 I. C. C. 286. Though a shipper must pay the rates legally established, he may recover the excess over a reasonable rate. Coomes v. Chicago, M. & St. P. Ry. Co., 13 I. C. C. 192. Protest when paying freight unnecessary. Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co., 13 I. C. C. 329; So. Pine Lumber Co. v. So. Ry. Co., 14 I. C. C. 195; Nicola, Stone & Myers Co. v. L. & N. R. Co., 14 I. C. C. 199. Complaint in name of an association not naming persons in whose behalf it is filed and not stating with reasonable particularity the shipments on which reparation is sought not sufficient to stop limitation. Missouri & Kansas Shippers' Asso. v. A. T. & S. F. Ry. Co., 13 I. C. C. 411. Informal written presentation of claim stops limitation. Venus v. St. L. I. M. & S. Ry. Co., 15 I. C. C. 136. Reparation allowed only from date of filing supplemental petition. Cattle Raisers' Asso v. M. K. & T. Ry. Co., 13 I. C. C. 418. Where reduced rates have been received because of irregularities, correction of such no ground for reparation. Bannon v. So. Ex. Co., 13 I. C. C. 516. Reparation awarded for refusing party rate ticket to one when granted to others. Koch Secret Service v. L. & N. R. Co., 13 I. C. C. 523. Reparation awarded for advancing a rate put in at the request of a shipper who had adjusted his business to the lower rate. New Albany Furniture Co. v. Mobile, etc. R. Co., 13 I. C. C. 594. Commission has no jurisdiction to award damages for breach of contract. La Salle, etc., R. Co. v. Chicago & N. W. R. Co., 13 I. C. C. 610. Excess rate paid may be recovered though shipper not damaged. Burgess v. Transcontinental Freight Bureau, 13 I. C. C. 668. Reparation allowed only from date of filing complaint. id. Voluntary reduction of rate not conclusive of right to reparation for paying the higher rate. Ottumwa Bridge Co. v. Chicago, M. & St. P. Ry. Co., 14 I. C. C. 121. The true owner paying the excessive charge can alone recover. Manu-

facturers selling F. O. B. their mill can not recover. Nicola, Stone & Meyers Co. v. L. & N. R. Co., 14 I. C. C. 199. Mistake in quoting rate not relieve shipper from paying full tariff rate. Foster Bros. Co. v. Duluth, etc., Ry. Co., 14 I. C. C. 232, 236. Misrouting at the highest rate entitles shipper to reparation. McCaull-Dinsmore Co. v. Chicago G. W. Ry. Co., 14 I. C. C. 527; Cedar Hill Coal & Coke Co. v. Col. So. Ry. Co., 14 I. C. C. 606; Gus. Momsen & Co. v. Gila Valley, etc., Ry. Co., 14 I. C. C. 614. Reparation allowed because through rate exceeded sum of locals. Minneapolis Threshing Mch. Co. v. Chicago, M. & St. P. Ry. Co., 14 I. C. C. 536; Sylvester v. Penn. R. Co., 14 I. C. C. 573; Hardenberg, D. & G. v. N. Pac. Ry. Co., 14 I. C. C. 579. In allowing reparation Commission takes no account of fact that less than tariff rate was paid and must assume that full rate was paid. Wilson v. Chicago, M. & St. P. Ry. Co., 14 I. C. C. 549, 550. When a car of particular capacity is ordered and higher capacity furnised, rate should be based on capacity of car ordered. Am. Lumber & Mfg. Co., v. So. Pac. Co., 14 I. C. C. 561. Commission no authority to adjudicate a claim against a shipper. Laning-Harris Coal & Grain Co. v. St. Louis & S. F. R. Co., 15 I. C. C. 37. Reparation not awarded in this case where carrier voluntarily reduced rate. Menefee Lumber Co. v. Tex. & Pac. Ry. Co., 15 I. C. C. 49. Can not award reparation for failure to make prompt delivery. Blume & Co. v. Wells Fargo & Co., 15 I. C. C. 53, 55. Commission has jurisdiction regardless of amount in controversy, but does not award costs or attorney's fees. Washer Grain Co. v. Mo. Pac. Ry. Co., 15 I. C. C. 147, 151, 152. Jurisdiction to award damages for diverted shipments. Woodward & Dickerson v. L. & N. R. Co., 15 I. C. C. 170. Commission may authorize a compromise of a claim for reparation. Joice & Co. v. Ill. Cent. R. Co., 15 I. C. C. 239; Goff-Kirby Coal Co. v. Bessemer & Lake E. R. Co., 15 I. C. C. 553. No jurisdiction in Commission to require a shipper to make good an undercharge. Falls & Co. v. Chicago, R. I. & P. Ry. Co., 15 I. C. C. 269. Should claim reparation in original complaint and not wait until after a determination of the question of the validity of a rate. Morse Produce Co. v. Chicago, M. & St. P. Ry. Co., 15 I. C.

C. 334. Scope of sections eight and nine discussed, holding reparation may be awarded on past shipments. Arkansas Fuel Co. v. Chicago, M. & St. P. Ry. Co., 16 I. C. C. 95, 98. Damages for loss of employment too speculative. Allender v. Chicago, B. & Q. R. Co., 16 I. C. C. 103. An association may maintain a complaint for damages to its members. California Com. Asso. v. Wells Fargo Ex. Co., 16 I. C. C. 458, 463. In a suit for damages for violating the fourth section brought in the United States circuit court, the measure of damages is the difference between the amount paid for the shorter haul and the charge for the longer haul; the jury may allow interest, but such interest dates from last payment. Junod v. Chicago & N. W. Ry. Co., 47 Fed. 290; Osborne v. Chicago & N. W. Ry. Co., 48 Fed. 49. Reversed on other points. Chicago & N. W. Ry. Co. v. Osborne, and same v. junod, 52 Fed. 912, 3 C. C. A. 347. Writ of certiorari refused by Supreme Court. 146 U. S. 364, 36 L. Ed. 1002; see also Parsons v. Chicago & N. W. R. Co., 167 U. S. 447. 453, 42 L. Ed. 231, 234. Common law remedies for extortion are superceded by a statute creating a Commission to determine the question. Winsor Coal Co. v. Chicago & A. R. Co., 52 Fed. 716, referring to a state statute. Right for damages exists for unlawfully refusing to interchange traffic. Toledo A. A. & N. M. Ry. Co. v. Penn. Co., 54 Fed. 730, 740, 19 L. R. A. 387, 5 I. C. R. 545, 22 U. S. App. 561. Can not recover for a violation of the interstate commerce act in a state court; there is no common law of the United States. Swift v. Philadelphia & R. R. Co., 58 Fed. 858. Same doctrine as to common law announced same case. 64 Fed. 59. *Contra.* Murray v. Chicago & N. Y. Ry. Co., 62 Fed. 24. Affirmed. 92 Fed. 868, 35 C. C. A. 62, and Kinnavey v. Terminal R. Asso., 81 Fed. 802, 804. See as to common law, Western Union Telegraph Co. v. Call Publishing Co., 181 U. S. 92, 45 L. Ed. 765, 21 Sup. Ct. 561, where Mr. Justice Brewer says:

"There is no body of federal common law separate and distinct from the common law existing in the several states, in the sense that there is a body of statute law enacted by Congress separate and distinct from the body of statute law enacted by the several states. But it is an entirely different thing to hold that there is no common law in force generally

throughout the United States, and the countless multitude of interstate commerical transactions are subject to no rules and burdened by no restrictions other than those expressed in the statutes of Congress. * * * the principles of the common law are operative upon all interstate commercial transactions, except so far as they are modified by congressional enactment."

A joint through rate is not the basis for a local rate in a suit for discrimination. Parsons v. Chicago & N. W. Ry. Co., 63 Fed. 903. Affirmed. 167 U. S. 447, 42 L. Ed. 231, 17 Sup. Ct. 887. The Federal courts have exclusive jurisdiction of suits brought under section eight and nine. Van Patten v. Chicago, M. & St. P. R. Co., 74 Fed. 981. And suits may be brought in any district in which the defendant resides. See also Connor v. Vicksburg, etc., R. Co., 36 Fed. 273, 1 L. R. A. 331. The rates filed and published according to the interstate commerce law are the only legal rates, and the fact that such rates are published is a defense in a court to a suit for damages alleging that such rates are unreasonable. Van Patten v. Chicago, M. & St. P. Ry. Co., 81 Fed. 545. Rights under the section are assignable. Edmunds v. Ill. Cent. R. So., 80 Fed. 78. What a petition under the sections for violating section two should show and disagreeing with the Swift case, *supra*, on the question of a common law of the United States. Kinnavey v. Terminal R. Asso., 81 Fed. 802. There must be an active, not merely a threatened, discrimination as a basis for a suit for damages. Lehigh V. R. Co., Rainey, 112 Fed. 487. The remedy provided by these sections is exclusive and an injunction will not be granted to compel obedience to section three. Central Stock Yards Co. v. L. & N. R. Co., 112 Fed. 823. No limitation being fixed by the Act, the law of the state where suit is brought will govern in that particular. Ratican v. Terminal R. Asso., 114 Fed. 666. *Contra.* Carter v. New Orleans & N. E. R. Co., 143 Fed. 99, 74 C. C. A. 293, holding that R. S. U. S. § 1047 applies. That the state law governs seems to be the law. Chattanooga Foundry & Pipe Works v. Atlanta, 203 U. S. 390, 51 L. Ed. 241, 27 Sup. Ct. 65. Opinion of Commission inadmissible in a suit to enforce its order, validity of its

order rests upon the existing facts, whether disclosed to the Commission or not, the election to proceed before the Commission bars a suit before the courts, no appeal is allowed from an order of the Commission granting or refusing reparation. Effect of the order when suit brought thereon. Western N. Y. & Penn. R. Co. v. Penn. Refining Co., 137 Fed. 343, 70 C. C. A. 23. Affirmed, without discussing above proposition. Penn. Refining Co. v. Western N. Y. & P. R. Co., 208 U. S. 208, 52 L. Ed. 456, 28 Sup. Ct. 268.

What a plaintiff must show in order to recover. Knudsen-Ferguson Fruit Co. v. Mich. Cent. R. Co., 148 Fed. 968, 974. petition for writ of certiorari denied. Must be protest before recovery when rate duly published. Knudsen-Ferguson Fruit Co. v. Chicago, St. P. M. O. Ry. Co., 149 Fed. 973, 79 C. C. A. 483. Petition for writ of certiorari denied. 204 U. S. 670, 51 L. Ed. 672. Carrier may be compelled to produce books on the trial of a case hereunder. International Coal Mining Co. v. Penn. R. Co., 152 Fed. 557. When trial before the court, the report of the Commission upon which the action is based may be received in evidence, Commission's finding *prima facie* true. So. Ry. Co. v. St. Louis Hay & Grain Co., 153 Fed. 728, affirming 149 Fed. 609. Reversed because the Commission erred in the law applied by it and remanded to send the matter back to the Commission. 214 U. S. 297, 53 L. Ed. 1004, 29 Sup. Ct. 678. A suit for damages for discrimination not alleging that the charge are not in accordance with the published schedules is not one arising under the interstate commerce law. Clement v. L. & N. R. Co., 153 Fed. 979. Can recover in court when full tariff rate is paid and a less rate charged plaintiffs competitors, but can not recover when only the tariff rate is collected, although such rate is fixed by combination, without first applying to the Commission. American Union Coal Co. v. Penn. R. Co., 159 Fed. 278. When a bond is given to dissolve an injunction against a rate subsequently declared unlawful, persons paying the illegal rate may intervene and participate in the proceeds to be collected upon the bond. Tift v. So. Ry. Co., 159 Fed. 555. In a suit for damages in a circuit court, the printed and published rates are legal unless declared by the Commission to be

illegal. Meeker v. Lehigh V. R. Co., 162 Fed. 354. Remedy by suit or complaint under these sections inadequate. Macon Grocery Co. v. Atlantic C. L. R. Co., 163 Fed. 738. Reversed. Atlantic C. L. R. Co. v. Macon Grocery Co., 166 Fed. 206, 92 C. C. A. 114. Shipper can not in the absence of a statute recover for discrimination if he has paid no more than a reasonable rate, and when suit is brought under the statute, it is the nature of a suit for a penalty and plaintiff must clearly and distinctly show a violation. Can not recover for failure to publish a tariff without showing that advantage would have been taken of the tariff if it had been published. Parsons v. Chicago & N. N. W. R. Co., 167 U. S. 447, 42 L.Ed . 231, 17 Sup. Ct. 887. The first proposition above quoted appears inconsistent with the opinion in Western Union Tel. Co. v. Call Printing Co., 181 U. S. 92, 45 L. Ed. 765, 21 Sup. Ct. 561, *supra*. A shipper can not recover in a state court for having paid an unreasonable rate prior to a determination by the Interstate Commerce Commission that the rate is unreasonable. Tex. & Pac. Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 51 L. Ed. 553, 27 Sup. Ct. 350. The court, however, is not because of this rule required to say that a suit in equity to prevent an illegal advance is also forbidden. So. Ry. Co. v. Tift, 206 U. S. 428, 51 L. Ed. 1125, 27 Sup. Ct. 709. Commission's order set aside and the facts held not to constitute illegal discrimination. Penn. Refining Co. v. Western N. Y. & P. R. Co., 208 U. S. 208, 52 L. Ed. 456, 28 Sup. Ct. 268. Suit for damages for a violation of the interstate commerce act cannot be maintained in a state court. Fitzgerald v. Fitzgerald, etc., Construction Co., 41 Neb. 374, 51 N. W. 838; Copp v. L. & N. R. Co., 43 L. Ann. 511, 9 So. 441, 3 I. C. R. 625, 46 Am. & Eng. R. cases 634; Gulf C. & S. F. R. Co v. Moore, 98 Tex. 302, 83 S. W. 363; Wabash R. Co. v. Sloop, 200 Mo. 198, 98 S. W. 607. But may maintain a suit on the common law right to have transportation at reasonable rates. Holliday Milling Co. v. Louisiana & N. W. R. Co, 80 Ark. 536, 98 S. W. 374. Overcharges on an interstate shipment paid prior to the Act not recoverable in a state court. Gatton v. Chicago, M. & St. P. Ry. Co., 95 Iowa 112, 63 N. W. 589, 28 L. R. A. 556, 5 I. C. R. 474. A judgment

An unjust rate voluntarily paid can not be recovered. Shrough v. New York C. & H. R. R. Co., 87 N. Y. Sup. 30, 92 App. Div. 584. Affirmed. 181 N. Y. 533, 73 N. E. 1133. May sue in Federal court for damages caused by a violation of section 2 without prior action by the Commission. Lyne v. Delaware, L. & W. R. Co., 170 Fed. 847.

**Notes of Decisions Rendered Since 1909.**

The Commission may award damages. Arkansas Fuel Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 95, 98 citing cases. Discussion of section and cases cited. Hillsdale Coal & Coke Co. v. P. R. Co., 19 I. C. C. 356, 373. The Commission sustained. P. R. Co. v. Int. Com. Com., 193 Fed. 81, Op. Com. Ct. No. 31, p. 275. Damages awarded on subsequent hearing for discrimination. Hillsdale Coal & Coke Co. v. P. R. Co., 23 I. C. C. 186. This proceeding involved as complainants other than the Hillsdale Coal Co. See also, as to measure of damages, Hillsdale Coal & Coke Co. v. P. R. Co., 229 Penn. 61, 78 Atl. 28. Statement of items of damage stands like a bill of particulars in a suit at law. Mountain Ice Co. v. D. L. & W. R. R. Co., 21 I. C. C. 45, 49. Voluntary reduction of a rate not always followed by an allowance of reparation. Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co., 20 I. C. C. 43, 24 I. C. C. 327. Reparation awarded on the basis of another proceeding. Victor Mfg. Co. v. S. Ry. Co., 27 I. C. C. 661. Damages awarded for violation of Sec. 6. Larson Lumber Co. v. G. N. R. Co., 21 I. C. C. 474. The fact of damage as well as the amount must be established. New Orleans Board of Trade v. Ill. C. R. R. Co., 29 I. C. C. 32, discussing the general question and citing authorities. Reparation does not always follow the reduction of a rate by the Commission. Maier & Co. v. S. P. Co., 29 I. C. C. 103, 105, and Curry & Whyte Co. v. D. & I. R. R., 30 I. C. C. 1, 14, and cases cited. Form stated for preparing statement of damages when reparation allowed. Wallingford v. A. T. & S. F. Ry. Co., 30 I. C. C. 19, 21. Mere fact of payment of discriminatory charges not sufficient to authorize an award of damages. Greenbaum v. L. & N. R. Co., 30 I. C. C. 699. Adding freight to price does not alone show damage to purchaser.

Phœnix Printing Co. v. M. K. & T. Ry. Co., 31 I. C. C. 289. Violation of Fourth Section not alone a sufficient basis for an award of damages. Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 150. Damages awarded for discrimination. Worn v. B. & L. R. R. Co., 32 I. C. C. 58. No damages awarded for failure to furnish instrumentalities to heat car. Best Co. v. G. N. R. Co., 33 I. C. C. 1. Damages awarded for failure to grant reconsignment. Rayner & Parker v. L. & N. R. Co., 33 I. C. C. 595. Damages for breach of contract not within jurisdiction of the Commission. McArthur Bros. Co. v. E. P. & S. W. Co., 34 I. C. C. 30. Damages for failure to accord transit. Brenner Lumber Co. v. M. L. & T. R. Co., 34 I. C. C. 630. Through rate exceeding aggregate of intermediate rates, damages awarded. McCaull-Dinsmore Co. v. M. P. Ry. Co., 35 I. C. C. 69. Reparation limited to pecuniary loss. Penn. R. Co. v. International Coal Mining Co., 230 U. S. 184, 57 L. Ed. 1446, 33 Sup. Ct. 893, reversing same styled case, 173 Fed. 1, 97 C. C. A. 383 and discussing the question at some length. Must be prior action by the Commission, when question of unjust discrimination is for determination. United States v. Pacific & A. Ry. & Nav. Co., 228 U. S. 87, 57 L. Ed. 742, 33 Sup. Ct. 443; Mitchell Coal & Coke Co. v. P. R. Co., 230 U. S. 247, 57 L. Ed. 1472, 33 Sup. Ct. 916; modifying same styled case, 183 Fed. 908. Robinson v. B. & O. R. Co., 222 U. S. 506, 56 L. Ed. 288, 32 Sup. Ct. 114. But such action is not necessary where the discrimination is the result of a violation of a legal tariff. P. R. Co. v. International Coal Mining Co., 230 U. S. 184, 57 L. Ed. 1446, 33 Sup. Ct. 893; American Tie and Timber Co. v. K. C. Ry. Co., 175 Fed. 28, defining "lumber" as a general term. Reparation may be ordered by the Commission without fixing a rate for the future. Baer Bros. Mercantile Co. v. Denver & R. G. R. Co., 233 U. S. 479, 58 L. Ed. 1055, 34 Sup. Ct. 641, reversing Circuit Court of Appeals in Denver & R. G. R. Co. v. Baer Bros. Mercantile Co., 187 Fed. 485, 109 C. C. A. 337, and sustaining the order of the Commission in Baer Bros. Mer. Co. v. M. P. Ry. Co., 17 I. C. C. 225. Where the fact that a tariff is discriminatory has been determined and the extent of the discrimination found by the Commission the courts have juris-

diction of a suit for damages for such discrimination although the particular plaintiff was not before the Commission. National Pole Co. v. C. & M. O. Ry. Co., 211 Fed. 65, reversing same styled case, 200 Fed. 185. Suit on an order of reparation may be brought in the district of the residence of the beneficiary thereunder. St. L. S. W. Ry. Co. v. Samuels & Co., 211 Fed. 588. See order of Commission, Samuels & Co. v. St. L. S. W. Ry. Co., 20 I. C. C. 646. For an extended discussion of the subject of suits on reparation orders see Lehigh V. R. Co. v. Clark, 207 Fed. 717, 125 C. C. A. 235, denying the right to recover in a suit on the order of the Commission in Naylor & Co. v. L. V. R. Co., 15 I. C. C. 9, Unrep. Opin. 168, 18 I. C. C. 624.

Order of the Commission awarding damages *prima facie* correct. Limitation statutes discussed. Meeker v. Lehigh Valley R. Co., 236 U. S. 412, 434, 59 L. Ed. 644, 35 Sup. Ct. 328, 337, reversing Lehigh Valley R. Co. v. Meeker, 211 Fed. 785. In these cases the right to an award was based in part on a discrimination charge. One not a party to a proceeding before the Commission may maintain his claim for an award of damages before the Commission or the courts. Such claim is barred when not filed within two years from the date of the accrual of the action, notwithstanding the order of the Commission declaring the rates unreasonable, was not finally sustained by the courts until long afterwards. Philips Co. v. G. T. W. R. Co., 236 U. S. 662. 59 L. Ed. 774, 35 Sup. Ct. 444.

An amendment including claims arising since the filing of the original complaint may be allowed. Lehigh V. R. Co. v. American Hay Co., 219 Fed. 539, 135 C. C. A. 307.

Allegations in suit on an order of the Commission held sufficient. So. Pac. Co. v. Goldfield Con. Milling Co., 220 Fed. 14, 135 C. C. A. 590.

The payment of freight charges, subsequently found by the Interstate Commerce Commission to be unreasonable and excessive, is presumptive evidence of damage to the shipper to the extent of the difference between the rate charged and a reasonable rate, and such presumption can be overcome only by definite proof, not resting upon uncertaintly or conjecture, negativing the fact or the amount of damage. Darnell-Taenzer Lumber Co. v. So. Pac. Co., 221 Fed. 890, 137 C. C. A. 460.

The ascertainment of the damages occasioned by a carrier's rules as to car distribution, which are unduly discriminatory, is as much within the scope of the Interstate Commerce Commission's authority, as though the damages were due to the exaction of unreasonable rates. Penn. R. Co. v. Clark Bros. Coal Min. Co., 238 U. S. 456, 59 L. Ed. 1406, 35 Sup. Ct. 896. reversing same styled case, 241 Pa. 515, 88 Atl. 754. See Mills v. L. V. R. Co., 238 U. S. 473, 59 L. Ed. 1414, 35 Sup. Ct. 888.

**Notes of Decisions Rendered Since 1915.**

A paid expense bill is not sufficient evidence of who paid the freight. Forbes Mfg. Co. v. L. V. R. Co., 39 I. C. C. 566, 567. See discussion and a long deferred decision. Plymouth Coal Co. v. P. R. R. Co., 56 I. C. C. 699, *seq.* Rules may be interpreted by the courts. Barrett v. Gimbel Bros., 226 Fed. 623, 625, 631, 141 C. C. A. 379; Hillsdale Coal & Coke Co. v. Penn. R. Co., 237 Fed. 272; Penn. R. Co. v. Sonman S. C. Co., 247 U. S. 120, 61 L. Ed. 188, 37 Sup. Ct. 146. But courts cannot fix rates. Montgomery v. Chicago, B. & Q. R. Co., 228 Fed. 616, 143 C. C. A. 138. Contention that Commission has no jurisdiction to award damages without merit. Missouri Pac. Ry. Co. v. Ferguson Saw Mill Co., 235 Fed. 474, 149 C. C. A. 20 Prima facie force of Commission's order; interest proper; trial. Penn. R. Co. v. Minds, 244 Fed. 53, 156 C. C. A. 481, 250 U. S. 368, 63 L. Ed. 665, 39 Sup. Ct. 531. There must have been substantial evidence before the Commission. A. T. & S. F. Ry. Co. v. Spiller, 246 Fed. 1, 158 C. C. A. 227; Mich. Cent. R. Co. v. Elliott, 256 Fed. 18, — C. C. A. —. All damages are presumed to be included in Commission's order. Louisville & N. R. Co. v. Ohio Valley Tie Co., 242 U. S. 288, 61 L. Ed. 305, 37 Sup. Ct. 120. See also all notes to sections 206-217 *ante*.

The Commission has in its reports to Congress suggested that jurisdiction to award reparation or damages should be taken from it and conferred on the Courts. In the decisions of the Commission there appears a disposition to look on reparation as a matter of grace, rather than one of legal right. The courts, on the contrary, have not assumed to apply their views of policy, but have enforced the law as written when-

ever the issue came before them. Experts from the debates of Congress taken from the separately and officially bound debates on the Act to Regulate Commerce, 1886 and 1887, are illuminating as to the intention of the legislature and follow:

In reporting the original Act from the Senate Committee. Senator Cullom, Chairman, saaid (p. 4 Interstate Commerce Debate 1886):

"In connection with these sections I desire to call attention to section 20, in which it is expressly stipulated that the provisions of this act shall not in any way abridge or alter the common-law remedies now open to the shipper, but shall be considered as in addition to such remedies, except that the remedy at common law and that proposed in the bill shall not both be prosecuted at the same time."

and at p. 5, speaking of section 1, he said:

"The concluding paragraph of the first section asserts the common-law requirement that all charges made in the transportation of passengers or property by or upon a railroad shall be reasonable and just."

The defects of the common law are stated in a quotation from the report of the Committee at p. 11 as follows:

"Evidence is not wanting to prove that the remedy at common law is impracticable and of little advantage to the ordinary shipper. It has been found so by the people of the States in dealing with their local traffic, and, as has been shown, their recognition of the fact has been authoritatively recorded in nearly every State in the Union by statutory enactments, and in many of them by the establishment of commissions, in the effort to provide for the shipper that prompt and effective remedy which it has been found by experience that recourse to the common law has failed to afford. The reasons for this failure apply with even greater force to the more complicated transactions of interstate commerce than to State traffic, because the former involve more perplexing questions and are affected by a greater diversity of varying conditions. The legislation of the States, the reports of the State commissions, the records of the courts, the evidence of shippers, and, in short, the whole current of testimony, is to the same effect; and the fact sfated is also admitted by some of the highest railroad authorities. Mr. Fink says:

'In many cases where small amounts are involved, which do not justify legal proceedings against the company, the aggrieved parties are prevented from prosecuting their claims. * * * Ordinary courts are not properly constituted for that purpose, and the time required for the adjudication of claims is

so long and the expenses so great as to defeat the very object for which proceedings are instituted.' " (Testimony, page 107).

* * *

"Some conception will thus be obtained of what a lawsuit is which involves the reasonableness of rates, or the existence of an unjust discrimination, or a local rate as compared with a through rate. As the onus is upon the complainant, add to his difficulties the fact that his adversary has nearly all the evidence in his possession, locked up in books and in the memory and intelligence of experts who have made the subject their study. The expense involved, the uncertainty to be faced, and the difficulties to be overcome in an ordinary suit at law have made that remedy obsolete and useless."

Senator Spooner in discussing the bill said (pp. 137 *et seq.*):

"I freely admit that in this country the common-law duty of the carrier has been greatly disregarded. I admit that the enactment by Legislature after Legislature of the common law upon the subject, but leaving to the aggrieved citizen the duty of vindicating in the courts his common-law rights, has been utterly futile as a shield against wrong by the carrier.

* * *

"The explanation of the utter inefficiency of the common-law duty and liability of the carrier as a protection to the people is familiar to every Senator. The grievances of the individual shipper are as a rule, each considered by itself, trifling in amount, and the citizen has in almost every instance been reluctant to engage in a litigation with a railway corporation to vindicate, for so small a sum, his rights under the common law or under statutes simply declaratory of the common law. Under the practice laws of the States the railway corporations have been enabled, and they have not been slow to avail themselves of the right, to protract such litigation by continuances, appeals, and otherwise, thereby rendering it burdensome and expensive. The sum involved being small, even success at the end of a long litigation, was to the complainant defeat.

* * *

"Under such circumstances it is not surprising, and the fact has been within the observation of every Senator, that in the great mass of instances the common-law remedy of the citizen has been unavailing, and the carrier has gone exempt from the performance of its common-law duty. So that if these clauses stood alone in the bill, apart from the peculiar provisions for their enforcement, I should not hesitate to denounce them as idle words. But the bill goes beyond that. The bill puts strength and virility into the common-law principles for the protection of the shipper. How? It puts the whole strength and power of the United States behind them."

Congressman, later Senator, Reagan, the author of the House bill, said:

"The second section of the Senate bill differs from the House bill in providing a measure of damages for its violation, and which is inadequate, by saying that a person charged a higher rate than is charged to any other person may collect the difference between such higher rate and the lowest rate charged upon like shipments during the same period.

This is no improvement on the common-law remedy which may now be invoked for a like purpose. The common law furnishes no practicable remedy for the abuses of power and the unlawful conduct of the managers of railroads. Claimants for small sums as damages can not as a general rule afford the expense of litigation to establish their claims, while the railroad corporations as a rule protract such litigation to such an extent as to wear out the claimants and defeat the ends of justice.

Their power to tax the commerce of the country at will enables them to supply the revenues necessary to employ the ablest legal talent of the country to represent them, and also to meet court costs; for these purposes the citizen must use his private means. This is known as a matter of common observation to all of us, and if we would protect the public against such wrongs we must furnish a better remedy than the common law. This is admitted in the able report of the Senate's committee.

The House bill provides for the recovery of full damages and requires the court in each case of recovery to tax the corporation with a reasonable fee for the plaintiff's counsel or attorney fees. This is an improvement of the common law remedy in that, in case of recovery, it requires the defendant to pay the plaintiff's reasonable attorney's fees. The remedy should go further and require the payment of double or treble damages, and I think I shall offer an amendment for that purpose."

Representative Hitt said (p. 481):

"The Cullom bill enables the poorest man, the tenant as easily as the rich farmer or mercantile house, to present his complaint in a plain way and if he has a fair case to set in motion all of the machinery of the courts with able counsel and without any expense or risk to himself, and secure redress for his wrongs as quickly and completely as the richest."

Representative Hepburn, the leader of the minority on the House Committee, said (p. 482):

"I take it that no legislation is necessary to declare that extortion and overcharges shall not be permitted. Under the common law to-day, a person who suffers by extortion may bring his action in the courts and recover if he can make his proofs.

But the difficulty with him under the Reagan bill is to establish his cause of action. He has the affirmative of the issue,

and the burden is upon him to show that a given rate—the one exacted from him—is excessive or extortionate. Under the other bill this is not true. He has a friend at court. It becomes under the Cullom bill the duty of the commission—skilled men, experts on the subject of transportation—to investigate for him and ascertain the very facts, to furnish the very proofs of all that he may need. They have the broadest range, the amplest facilities, to procure the necessary information. They may resort to and examine all sources of information; and the expenses are paid by the Government. The bill provides that the commission shall have all of these ample opportunities for investigation, and they are required under the law to make their findings of fact; and these findings in the subsequent litigation that may occur are to stand as true prima facie. These findings make out the complainant's case for him, shifting the burden of the proof from the weak, where it can not be made, on to the strong. That is on the supposition that the complainant is in the right.

Why, gentlemen, I regard this as a boon of inestimable value in equalizing the possibilities that may result from litigation. To-day if a suitor goes into court and attempts to establish an affirmative proposition against a railroad carrier he finds that the experts, the men who have the information upon the subject, are all of them upon the other side of the question, all of them hostile to his purpose. The great difficulty in the way of the overcharge shipper lies here: Suppose my friend from Nebraska is called as a witness to substantiate the proposition that a given rate is extortionate. He perhaps has much more of information than the average suitor on subjects of this kind. He says the given rate in inquiry is extortionate. "How do you know?" is the question submitted upon cross-examination—I am trying to look at this and discuss it as a practical question, as something every man will have to meet under the terms of the Reagon bill—"how do you know that this is extortionate?" Perhaps the very best reason that he could give would be to suggest a comparison between the rate charged and another rate charged by some other corporation.

Well, sir, the attorney would suggest, "What are your means of information? What is your knowledge as to the conditions in the two cases? What do you know of the elements of cost that enter into the thing we call transportation, forty or fifty or sixty distinct elements of cost—the grades here and there, the cost of construction of that road, the cost of this; how must of the time of that is impeded by snow or storms as compared with this; the amount of traffic of the two roads, the cost of fuel?" And so he would go through the whole list of factors that aid in making the total of expense in moving freights.

The gentleman would undoubtedly be compelled to say, unless his information is more ample and his knowledge much greater than that of the average citizen, that he was unable to answer these questions. His evidence would have absolutely no weight because not based on knowledge of the subject-matter, and the suit would fail. Hence it is a mere mockery to a man to say he shall have his right of action; it is a mere mockery to say that the railroad corporations shall not impose upon him when you give him no means to make good his assertion that they have imposed upon him. It is not enough to give him a right of action. If you intend to give him anything of value give him such a remedy as will enable him to assert and maintain his rights in the courts, if the corporation that has wronged him will not obey the findings and order of the commission and compel him to go to the courts for relief."

and at page 507 he said:

"Courts can be corrupt, the gentleman need not be reminded, as well as commissioners; and here to possibly a corrupt court—there are few of them, but there may be some under the gentleman's bill—the suitor is remanded. He is remanded to it without any aid from any law other than that to-day possessed by all suitors. He stands there alone, weak and poor and ignorant, though he may be, with a ten-dollar case or a one-hundred dollar case. He must make his own case against a wealthy corporation. He must do that, too, without technical knowledge of the matters litigated. He has no witnesses who are better informed than himself. The witnesses which must establish his case are the experts that belong to the other side of the question. The employees of the carrier are the only experts he can secure.

Under the Senate bill the law mercifully provides him with his witnesses. That gives to him where he makes his complaint the aid of the commission. It becomes their duty at once to investigate. They may send for persons and for papers. They may resort to the books of the corporation. They can compel the attendance of the employees as experts, and the members of the commission will soon be experts themselves; and from the mass of testimony they make up a finding which becomes in the future litigation one of the records of the court and stands there prima facie as true, throwing the burden of proof upon the corporation."

The measure of damage for discrimination provided in section 2 of the original Senate bill read (p. 556):

"* * * and any common carrier who shall violate the provisions of this section as aforesaid shall be liable to all persons who have been charged a higher rate than was charged any other person or persons for the difference between such higher

rate and the lowest rate charged upon like shipments during the same period; or if such lower rate was made on any time contract or understanding, the said common carrier shall be liable to pay a like rebate or draw-back to all other shippers over the same route between the same points who have shipped goods during the time that such contract or understanding was in operation."

Section 3 provided this measure (p. 556):

"Any common carrier who shall willfully violate the provisions of this section of this act shall be liable to the person or persons injured thereby for all damages occasioned by such violation."

and section 4 was as follows (*id.*):

"Any common carrier who shall violate the provisions of this section of this act shall be deemed guilty of extortion, and shall be liable to the person or persons, against whom any such excessive charge was made for all damages occasioned by such violation."

Senator Cullom in describing the changes proposed in this original bill, said (p. 3, Debate 1887):

"Sections 2, 3, and 4 of the Senate bill, prohibiting discriminations, contained provisions in relation to the recovery of damages. These have been stricken out of said sections, and have been grouped together in one section, which is made section 8 of the committee bill. Except as to this rearrangement, substantially the only change made has been the addition of the provision of the House bill that "a reasonable counsel or attorney's fee" shall be allowed by the court in every case of the recovery of damages.

Senator Coke, in speaking to the motion to adopt the conference report recommending the passage of the bill which became a law February 4, 1887, with special reference to the pooling section, said (p. 123, Debate 1887):

"It is sufficient now to know that the best judgment of those who have been intrusted with its consideration is embodied in the pending bill, and that to leave the question as it now stands without legislation is a greater wrong to the people of this country than could possibly follow the adoption of the bill. The bill is strictly in line with the principles of the common law; that system of laws which, as the Senator from Alabama happily expressed it, "fills this country like the air," being an embodiment of the culled and selected wisdom of centuries, as it has been evolved from the experience of mankind in the affairs of practical life, and which has been aptly eulogized as "the perfection of human wisdom."

I am not apprehensive of error or mistake, nor do I fear that we may wrong either the people or the corporations while adhering with fidelity to the tried and approved principles of the common law, as is done in the pending bill."

The Reagan Bill, section 7, provided (p. 555, 1887):

"Sec. 7. That each and every act, matter, or thing in this act declared to be unlawful is hereby prohibited; and in case any person or persons as defined in this act, engaged as aforesaid, shall do, suffer, or permit to be done any act, matter, or thing in this act prohibited or forbidden, or shall omit to do any act, matter, or thing in this act required to be done, or shall be guilty of any violation of the provisions of this act, such person or persons shall be held to pay to the person or persons injured the full amount of damages so sustained, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee, to be fixed by the court in every case of recovery, shall be taxed and collected as costs in the case, to be recovered by the person or persons so damaged by suit in any State or United States court of competent jurisdiction where the person or persons causing such damage can be found or may have an agent, office, or place of business."

Representative Hepburn said (p. 556):

"All of the remedies provided by the bill are additional remedies. Nothing is taken away. Much is added."

In the report of the House bill "reasonable" instead of "just and reasonable" is used (1887 Debate p. 611).

§ 384. **Penalties for Violation of the Act.**—That any Common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act *for which no penalty*

*is otherwise provided*, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property or the transmission of intelligence, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Section 10 of the original Act with the proviso added by the Act of March 2, 1889 and the words "for which no penalty is otherwise provided" added by the Act of June 18, 1910, and the words "or the transmission of intelligence" added by Transportation Act 1920 which Act also numbers this section and the next three sections as paragraphs 1 to 4 inclusive.

The Commission has no power to enforce penalties, the penal provisions being enforcible only in the courts. Slater v. N. Pac. R. Co., 2 I. C. C. 359, 2 I. C. R. 243. Sufficient to show that the agent charged had general charge of a freight office of the carrier violating the Act. United States v. Tozer, 37 Fed. 635, 39 Fed. 369. Reversed. Tozer v. United States, 52 Fed. 917. A corporation cannot be convicted of a crime and the agent must be one who knowingly aids or abets the violation and not a mere clerk. United States v. Mich. Cent. R. Co., 43 Fed. 26. Corporations not criminally liable. Re Pensley, 44 Fed. 271. But see under act 1903 Re Pooling Freights, 115 Fed. 588. The offense is committed when the voucher for rebate is signed and not when the payment is made. United States v. Fowkes, 53 Fed. 13, 3 C. C. A. 394. An agent who merely collects rates and has nothing to do with fixing rates is not indictable. United States v. Mellen, 53 Fed. 229, 233. Common carrier not a corporation indictable, but not so a corporation. Toledo, A. A. & N. M. Ry. Co. v. Penn. Co., 54 Fed. 730, 736, 19 L. R. A. 387, 5 I. C. R. 545, 22 U. S. App. 561. A combination to defeat

the provisions of the Act to Regulate Commerce is within this section. Waterhouse v. Comer, 55 Fed. 149, 157, 19 L. R. A. 403, 1 Fed. Anti-Trust Dec. 119. No penalties before amendment of 1889. United States v. Howell, 56 Fed. 21. The receiver of a rebate not a criminal under the old law. United States v. Hanley, 71 Fed. 672. What should be stated in an indictment for discrimination. United States v. DeCoursey, 82 Fed. 302. An indictment under this section for discrimination in failing to furnish switch connections must allege that such connection is practicable. United States v. B. & O. R. Co., 153 Fed. 997.

"Carrier" includes express company. United States v. Adams Ex. Co., 229 U. S. 381, 57 L. Ed. 1237, 33 Sup. Ct. 878.

**Notes of Decisions Rendered Since 1915.**

Section applied in a bill to enjoin a strike. Alaska S. S. Co. v. International Longshoremen's Asso., 236 Fed. 964.

§ 385. **Penalties for False Billing, False Classification, False Weighing, etc., by Carriers.**—Any common carrier, subject to the provisions of this act, or whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the direction of the court, for each offense.

Paragraph two, section ten, of Act as amended by Act March 2, 1889.

Necessity for this enactment suggested. Re Underbilling. 1 I. C. C. 633, 1 I. C. R. 813, 820.

Construed in connection with and not repealing Elkins Act. Nichols & Cox Lumber Co. v. United States, 212 Fed. 588. See also notes Secs. 71 to 374, *supra*.

Form of indictment. Eljin J. & E. Ry. Co. v. United States, 253 Fed. 907, — C. C. A. —. A fraudulent claim for injury comes within the prohibition. Laser Grain Co. v. United States, 250 Fed. 826. Writ of certiorari denied. 249 U. S. 601. Prosecution may be had at point of destination. United States v. Union Mfg. Co., 240 U. S. 605, 60 L. Ed. 822, 36 Sup. Ct. 420.

§ 386. **Penalties against Shippers for False Billing, etc.**—Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation; or who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then

established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the peritentiary for a term of not exceeding two years, or both, in the discretion of the court: Provided, That the penalty of imprisonment shall not apply to artificial persons.

Paragraph 3, Sec. 10, added by Act March 2nd, 1889. and amended by Act June 18, 1910. The amendment of 1889 read:

Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

The intention of the act was to protect carriers as well as shippers. Page v. Delaware, L. & W. R. Co., 6 I. C. C. 148, 166, 4 I. C. R. 525, 534. Order not enforced. Int. Com. Com. v. Delaware, L. & W. R. Co., 64 Fed. 723. The purpose of the enactment stated. United States v. Howell, 56 Fed. 21, 24. A rebate under Act March 2, 1889, is not illegal unless granted to some and refused to others in like situation. United States v. Hanley, 71 Fed. 672. Crime is committed at the place where the consignor obtains the false billing.

Re Belknap, 96 Fed. 614; Davis v. United States, 104 Fed. 136, 43 C. C. A. 448.

§ 387. **Penalties and Damages for Inducing Discriminations.**—If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or any other thing of value, solicitation, or otherwise, induce or attempt to induce any common carrier subject to the provisions of this act, of any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in any action to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

Paragraph 4 of Sec. 10 added by Act March 2, 1889 as amended by Act June 18, 1910. The words italicized were added by the Act of 1910 and the words "on the case" were omitted by that amendment.

Paragraph four of section ten added by Act March 2, 1889.

Cited, Washer Grain Co. v. Mo. Pac. Ry. Co., 15 I. C. C. 147, 152, 153. What should be stated in an indictment. United States v. Hanley, 71 Fed. 672.

§ 388. **Appointment and Term of Office of Commissioner.**—That a Commission is hereby created and established to be known as the Interstate Commerce Commission, which shall be composed of eleven Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under

this Act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, Anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall suceed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than six of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this Act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

Section eleven of original Act, except as will appear from section twenty-four added by the Act of June 29, 1906, and amended by Transportation Act 1920, the number of Commissioners were increased from five to eleven, and this section has consequently been copied to conform to the provisions of section twenty-four.

The commission is a body corporate, with power to sue and be sued. Int. Com. Com. v. B. & O. R. Co., 145 U. S. 263, 36 L. Ed. 699, 12 Sup. Ct. 844; Int. Com. Com. v. A. T. & S. F. Ry. Co., 149 U. S. 264, 37 L. Ed. 727, 13 Sup. Ct. 837; Tex. & Pac. R. Co. v. Int. Com. Com., 162 U. S. 197, 40 L. Ed. 940, 16 Sup. Ct. 666.

§ 389. **Power and Duty of Commissioners.**—That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry

out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

First two paragraphs of section twelve as enacted by Act of February 10, 1891, enlorging somewhat the original Act and the amendment of March 2, 1889.

The paragraphs of section 12 are numbered 1 to 7 by Transportation Act 1920.

The original Act covering this section read:

"That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the

purposes of this act the Commission shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section."

The Act of 1889 follows:

"That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the object for which it was created, and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute, under the direction of the Attorney-General of the United States, all necessary proceedings for the enforcement of the provisions of this act, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States and for the purposes of this act the Commission shall have the power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and in case of disobedience to a subpœna, the Commission, or any party to a poceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section."

Practice for complainant to obtain production of books. Rice v. Cincinnati, W. & B. R. Co., 3 I. C. C. 186, 2 I. C. R. 584, 594. Application to require production of the papers of third persons not before the Commission denied. Haddock v. Delaware, L. & W. R. Co., 4 I. C. C. 296, 3 I. C. R. 302. The Commission is vested with only administrative powers, which fall far short of making it a court. Kentucky & I. Bridge Co. v. L. & N. R. Co., 37 Fed. 567, 612, 613. The Interstate Commerce Commission is an administrative body and the Act authorizing the courts to aid the Commission with process to compel a response to the subpœna of the Commission is unconstitutional. Re Interstate Commerce Commission, Application for Order Against Brimson et al., 53 Fed. 476, 481. Reversed, holding section constitutional. Int. Com. Com. v. Brimson, 154 U. S. 477, 38 L. Ed. 1047, 14 Sup. Ct. 1125. Bill in equity filed in name of Commission, its duties stated. Int. Com. Com. v. Detroit, G. H. & M. Ry. Co., 57 Fed. 1005, 4 I. C. R. 722. Reversed. 74 Fed. 803, 21 C. C. A. 103, 43 U. S. App. 308, 167 U. S. 633, 42 L. Ed. 306, 17 Sup. Ct. 986. Not necessary in suits to enforce the orders of the Commission to file the testimony taken before it, but when such testimony was taken on notice, it may be offered by either party. Int. Com. Com. v. Cincinnati, N. O. & T. P. R. Co., 64 Fed. 981, 13 U. S. App. 700. But the mere opinion of the Commission is not admissible as evidence. Western N. Y. & P. R. Co. v. Penn Refining Co., 137 Fed. 343, 70 C. C. A. 23. Affirmed. Penn Refining Co. v. Western N. Y. & P. R. Co., 208 U. S. 208, 52 L. Ed. 456, 28 Sup. Ct. 268. Proceedings in the name of the United States are authorized by this section without a preliminary investigation by the Commission. United States v. Mo. Pac. Ry. Co., 65 Fed. 903. Reversed. Mo. Pac. Ry. Co. v. United States, 189 U. S. 274, 47 L. Ed. 811, 23 Sup. Ct. 507. Suit brought by authority of section. United States v. Joint Traffic Asso., 76 Fed. 895, 1 Fed. Anti-Trust Dec. 615. Affirmed. Circuit Court Appeals, 89 Fed. 1020, 32 C. C. A. 491, 45 U. S. App. 726, 1 Fed. Anti-Trust Dec. 869. See decision of Supreme Court, *post*, this section. Section quoted in discussing the refusal of a witness to answer in an investigation by a grand jury of violations of the

Act. Counselman v. Hitchcock, 142 U. S. 547, 35 L. Ed. 1110, 1113, 12 Sup. Ct. 195. After this decision the immunity Act of February 11, 1893, was passed. Section twelve is constitutional. Int. Com. Com. v. Brimson, 154 U. S. 447, 38 L. Ed. 1047, 14 Sup. Ct. 1125; Int. Com. Com. v. Baird, 194 U. S. 25, 48 L. Ed. 860, 24 Sup. Ct. 563. Upon an inquiry by the Commission, carriers should not withhold their evidence and present it later before the court on a suit to enforce the order of the Commission. Cincinnati, N. O. & T. P. Ry. Co. v. Int. Com. Com., 162 U. S. 184, 40 L. Ed. 935, 16 Sup. Ct. 700. The Commission may be a party plaintiff or defendant. Tex. & Pac. Ry. Co. v. Int. Com. Com., 162 U. S. 197, 40 L. Ed. 940, 16 Sup. Ct. 666. A suit to enjoin a carrier from violating the Act to Regulate Commerce could not be brought by the United States at the request of the Commission prior to the Act of February 19, 1903. Mo. Pac. Ry. Co. v. United States, 189 U. S. 274, 47 Fed. 811, 23 Sup. Ct. 507. Prior to the Hepburn Act the Commission had no power to fix rates. Int. Com. Com. v. Cincinnati, N. O. & T. P. R. Co., 167 U. S. 479, 42 L. Ed. 243, 17 Sup. Ct. 896. This case was subsequently followed by other cases citing the principal case. Nor did the Commission have power to fix joint through routes. Int. Com. Com. v. Western & A. R. Co., 93 Fed. 83, 35 C. C. A. 217, 181 U. S. 29, 45 L. Ed. 729, 21 Sup. Ct. 512. See also Ky. & I. B. Co. v. L. & N. R. Co., 37 Fed. 567, 2 I. C. R. 351; Little Rock & M. R. Co. v. St. Louis & S. W. R. Co., 41 Fed. 559; Little Rock & M. R. Co. v. East Tenn., Va. & Ga. Ry. Co., 47 Fed. 771; Chicago & N. W. Ry. Co. v. Osborne, 52 Fed. 912, 3 C. C. A. 347, 10 U. S. App. 430; Union P. R. Co. v. United States, 117 U. S. 355, 29 L. Ed. 920, 6 Sup. Ct. 772. The Commission an administrative body. Cincinnati, N. O. & T. P. R. Co. v. Int. Com. Com., 162 U. S. 184, 40 L. Ed. 935, 16 Sup. Ct. 700. The powers exercised by the Commission being analogous to a referee or special commissioner. Ky. & I. Bridge Co. v. L. & N. R. Co., 37 Fed. 567. Its powers are, however, quasi judicial. Int. Com. Com. v. Cincinnati, N. O. & T. P. R. Co., 167 U. S. 479, 42 L. Ed. 243, 17 Sup. Ct. 896. Cannot require the attendance of witnesses except on complaints or on investigations of subjects that might become the basis of a

complaint. Harriman v. Int. Com. Com., 211 U. S. 407, 53 L. Ed. 253, 29 Sup. Ct. 115.

**Notes of Decisions Rendered Since 1909.**

*Quære,* Can papers ordinarily held to be privileged be required to be produced? United States v. L. & N. R. Co., 212 Fed. 486, 494. The Commission has no jurisdiction to require a carrier to submit its correspondence for inspection. U. S. v. L. & N. R. Co., 236 U. S. 318, 59 L. Ed. 598, 35 Sup. Ct. 363. The Commission cannot inquire into the affairs of a stranger to an investigation. Ellis v. Int. Com. Com., 237 U. S. 434, 59 L. Ed. 1036, 35 Sup. Ct. 645.

Section quoted and applied. Car Supply Investigation, 42 I. C. C. 657, 673. The Commission was without power to order a carrier to furnish a particular type of car. United States v. P. R. Co., 242 U. S. 208, 61 L. Ed. 251, 37 Sup. Ct 95.

§ 390. **Power of Courts to Punish for Disobedience, Witnesses Not Excused because Testimony May Incriminate.**— And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a *subpoena* issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said commission and produce books and papers if so ordered and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Paragraph three of section twelve, being paragraph two of said section in original Act. See immunity Act, act February 11, 1893, *post*, § 457.

An officer of a carrier, not himself incriminated by the documents, must respond to a notice to produce. Re Peasley, 44 Fed. 271. Provision giving court power to punish dis-

obedience to the subpœna of the Commission unconstitutional. Re Interstate Commerce Commission Application for Order Against W. G. Brimson et. al., 53 Fed. 476, 481. Reversed, holding section valid. Int. Com. Com. v. Brimson, 154 U. S. 447, 38 L. Ed. 1047, 14 Sup. Ct. 1125. The Commission has plenary power to institute an investigation into any matter within its jurisdiction, and on such investigation to require the attendauce of witnesses and the production of papers. Int. Com. Com. v. Harriman, 157 Fed. 432. Reversed in part, holding that testimony could only be required in connection with complaints or upon the investigation of subjects that might be made the object of a complaint. Harriman v. Int. Com. Com., 211 U. S. 407, 53 L. Ed. 253, 29 Sup. Ct. 115. See also United States v. Skinner, 218 Fed. 870.

§ 391. **Right to Take Testimony by Deposition and the Manner Thereof Prescribed.**—The testimony of any witness may be taken, at the instance of a party in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court or court of common pleas of any of the United States or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party, or his attorney, proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce

documentary evidence before the Commission as hereinbefore provided.

Every person deposing as herein provided shall be cautioned and sworn, or affirm, if he so request, to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

Witnesses whose depositions are taken pursuant to this act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Last paragraph of section twelve, added by the Act of February 10, 1891.

See rule six of Rules of Practice *ante*. Sec. 278. Section referred to. Foster Bros. Co. v. Duluth, etc., R. Co., 14 I. C. C. 232.

§ 392. **Persons Who May File Complaints with the Commission and Practice with Reference Thereto.**—That any person, firm, corporation, *company*, or association, or any mercantile, agricultural, or manufacturing society *or other organization*, or body politic or municipal organization, *or any common carrier*, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the (charges) complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the (said)

common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Section 13 of the original Act as amended by the Act of June 18, 1910. The words italicized were added by the amendment. The words in brackets were in the original Act and omitted from the amendment.

Complaint of a violation of the Act should be made and not a mere request for a construction of the law. Re Petition of Order of Railway Conductors, 1 I. C. C. 8, 1 I. C. R. 18; Penn. Co. v. Louisville, N. A. & C. R. Co., 3 I. C. C. 223, 2 I. C. R. 603. When no overt act in violation of the law is charged, complaint will be dismissed. Holbrook v. St. Paul, M. & M. R. Co., 1 I. C. C. 102, 1 I. C. R. 323. No replication to answer required. Powers and Procedure of the Commission, 1 I. C. C. 223, 1 I. C. R. 408, 410; Oregon Short Line v. N. Pac. R. Co., 3 I. C. C. 264, 2 I. C. R. 639. Vermont State Grange could intervene and complain against charges on east bound freight, though original complaint referred only to west bound freight. Boston & A. R. Co. v. Boston & L. R. Co., 1 I. C. C. 158, 1 I. C. R. 500, 571. Where answer denies complaint and complainant fails to appear, complaint dismissed. Jackson v. St. Louis, A. & T. R. Co., 1 I. C. R. 599. New grievances cannot be set up in an amendment. Riddle, Dean & Co. v. B. & O. R. Co., 1 I. C. C. 372, 1 I. C. R. 701; Delaware State Grange v. New York, P. & N. R. Co., 2 I. C. C. 309, 2 I. C. R. 187. Rule as to rehearings stated by Judge Cooley. Riddle, Dean & Co. v. Pittsburg & L. E. R. Co., 1 I. C. C. 490, 1 I. C. R. 773. Case not decided on a theory, neither in the complaint nor the evidence. Martin v. Chicago, B. & Q. R. Co., 2 I. C. C. 25, 2 I. C. R. 32. Sufficient to make initial carrier a party when complaining against a classification. Any party at interest may be heard without formal intervention. Hurlburt v. Lake Shore & M. S. R. Co.,

2 I. C. C. 122, 2 I. C. R. 81. Decision of the Commission applies to the facts of the particular case. Re Relative Tank and Barrel Rates, 2 I. C. C. 365, 2 I. C. R. 245. After a case closed, an application from one not a party for a rehearing will not be granted. Re Petition of Produce Exchange of Toledo, 2 I. C. C. 588, 2 I. C. R. 412. Commission may investigate and deal with violations of the law without formal complaint. Re Investigation of Acts of Grand Trunk Ry., 3 I. C. C. 89, 2 I. C. R. 496. Re Alleged Excessive Rates on Food Products, 4 I. C. C. 48, 116, 3 I. C. R. 90, 151. What a petition for rehearing should show. Myers v. Penn. Co., 2 I. C. C. 573, 2 I. C. R. 403, 544. Must allege that the violation complained of occurred with reference to an interstate shipment. White v. Mich. Cent. R. Co., 3 I. C. C. 281, 2 I. C. R. 641. When a complaint is filed by a state railroad Commission, it will not be dismissed because such Commission is thereafter abolished. Railroad Commission of Florida v. Savannah, Fla. & W. R. Co., 5 I. C. C. 13, 3 I. C. R. 688. Complaint may be filed against a receiver of a carrier engaged in interstate commerce. Railroad Commission of Georgia, Trammell et al. v. Clyde S. S. Co., 5 I. C. C. 324, 4 I. C. R. 120. Commission will take proof on complaint that carrier has not answered. Tecumseh Celery Co. v. Cincinnati, J. & M. Ry. Co., 5 I. C. C. 663, 4 I. C. R. 318. Different ground of an objection to a rate may be urged in a second complaint. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co., 6 I. C. C. 61, 4 I. C. R. 373, 384. Notwithstanding complainant may have violated the law, Commission will act on complaint for benefit of public. Page v. Delaware, L. & W. R. Co., 6 I. C. C. 148, 548, 4 I. C. R. 525. Long after complaint decided will not reopen for purpose of acting on application for reparation. Rice, R. & W. v. W. N. Y. & Penn. R. Co., 6 I. C. C. 455. Cannot authoritatively determine what is not in issue by pleadings. Commercial Club of Omaha v. Chicago, R. I. & P. Ry. Co., 6 I. C. C. 647. An association may bring complaint, and defendants not entitled to dismissal because there is no direct damage to complainant. Milk Producers Protective Asso. v. Delaware, L. & W. R. Co., 7. I. C. C. 92, 163. Shippers claim submitted by the carrier

treated as a formal case. Roth v. Tex. & Pac. Ry. Co., 9 I. C. C. 602. Commission clearly has the right to award damages. Cattle Raisers' Asso. of Texas v. Chicago, B. & Q. R. Co., 10 I. C. C. 83. One a party to a case may amend and claim reparation. id. 105. Complaints against unreasonable rates are in behalf of the public, and complainants need not enter with "clean hands." Tift v. So. Ry. Co., 10 I. C. C. 548, 578. Order enforced. 138 Fed. 753, 123 Fed. 789. Affirmed. 206 U. S. 428, 51 L. Ed. 1124, 27 Sup. Ct. 709. Parties may present a written statement of facts and obtain the opinion of the Commission thereon. Re Freight Rates Between Memphis and Points in Arkansas, 11 I. C. C. 180. Cases decided before amendment of June 29, 1906, reopened after that amendment for further hearing. Cattle Raisers' Asso. v. Mo., Kan. & Tex. Ry. Co., 12 I. C. C. 1. But not when complainant had waited for about a year before trying to enforce an order which the carriers disobeyed. Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co., 12 I. C. C. 6, 507. Complaints must be presented with reasonable diligence. Producer's Pipe Line Co. v. St. L., I. M. & S. Ry. Co., 12 I. C. C. 186. Reparation asked informally after hearing closes not considered. Dallas Freight Bureau v. Gulf C. & S. F. Ry. Co., 12 I. C. C. 223. Testimony alone of a person having no interest in or personal knowledge of the rate complained of insufficient to sustain a complaint. Dallas Freight Bureau v. Mo., Kan. & Tex. Ry. Co., 12 I. C. C. 427. The Commission, being an administrative body, is unencumbered by technicalities. Missouri & Kan. Shippers' Asso. v. Mo., Kan. & Tex. Ry. Co., 12 I. C. C. 483. Each case must be disposed of on its own facts, and no general rule will be made that through rates must not exceed the sum of the locals. Coffeyville Vitrified Brick & Tile Co. v. St. Louis & S. F. R. Co., 12 I. C. C. 498. What is an "association" within meaning of section. Forest City Freight Bureau v. Ann Arbor R. Co., 13 I. C. C. 118. A complaint for reparation by a voluntary association must name the members and specify and describe the shipments with reasonable particularity, but see the facts of the case. Mo. & Kan. Shippers' Asso. v. A. T. & S. F. Ry. Co., 13 I. C. C. 411. Amendment not allowed to

graft on an application for through routes and joint rates a claim for reparation. La Salle & Bureau Co., R. Co. v. Chicago & N. W. Ry. Co., 13 I. C. C. 610. Not necessary in complaint for reparation to allege protest. Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co., 13 I. C. C. 329; Southern Pine Lumber Co. v. So. Ry. Co., 14 I. C. C. 195; Nollenberger v. Mo. Pac. Ry. Co., 15 I. C. C. 595, 596. This section shows a legislative intention to divorce proceedings before the Commission of all technicalities. Washer Grain Co. v. Mo. Pac. Ry. Co., 15 I. C. C. 147, 153. Cited arguing the power to award reparation for past shipments. Arkansas Fuel Co. v. Chicago, M. & St. P. Ry. Co., 16 I. C. C. 95, 98. This section prescribed procedure before Commission. Int. Com. Com. v. L. & N. R. Co., 73 Fed. 409, 414. An action for mandamus under section twenty-three will not preclude a shipper filing a complaint under section thirteen. Merchants Coal Co. v. Fairmont Coal Co., 160 Fed. 769. When a complaint is filed with the Commission, it must, if complaint presents matter within the purview of the Act, investigate regardless of whether or not the complainant may suffer direct damage from the act complained of. Int. Com. Com. v. Detroit, G. H. & M. Ry. Co., 57 Fed. 1005, 4 I. C. R. 722. Reversed on other grounds Detroit, G. H. & M. Ry. Co. v. Int. Com. Com., 74 Fed. 803, 21 C. C. A. 103, 43 U. S. App. 308. Circuit court of appeals affirmed. Com. v. Ry., 167 U. S. 633, 42 L. Ed. 306, 17 Sup. Ct. 986. Int. Com. Com. v. Baird, 194 U. S. 25, 39, 48 L. Ed. 860, 867, 24 Sup. Ct. 563. See opinion circuit judge. Int. Com. Com. v. Philadelphia & R. Ry. Co., 123 Fed. 969.

**Notes of Decisions Rendered Since 1909.**

Construing the section with Sections 8, 9, 14 and 16 of the Act, held the Commission may award damages for an excessive and unreasonable rate. Arkansas Fuel Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 95, 98; Hillsdale Coal & Coke Co. v. P. R. R. Co., dissenting opinion, 19 I. C. C. 356, 382. A complaint is an appeal to the government. Advances in Rates, Western Case, 20 I. C. C. 307, 315. Procedure liberal, but carriers should have notice of what is claimed. United States Leather Co. v. So. Ry. Co., 21 I. C. C. 323, 324. Augusta

& Savannah Steamboat Co. v. O. S. S. Co., 26 I. C. C. 380, 382; Eastern Wheel Mfrs. Co. v. A. & V. Ry. Co., 27 I. C. C. 370, 372. Findings under complaint bind only the carrier defendant thereto. Fels & Co. v. P. R. R. Co., 23 I. C. C. 483, 486. This and cognate sections guarantee a full hearing preliminary to issuing an order. Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 424, citing Int. Com. Com. v. L. & N. R. R. Co., 227 U. S. 88, 57 L. Ed. 431, 33 Sup. Ct. 185, reversing Louisville & N. R. R. Co. v. Int. Com. Com., 195 Fed. 541, Opin. Com. Ct. No. 4, p. 325, 375. For further history of the case see New Orleans Board of Trade v. L. & N. R. Co., 17 I. C. C. 231; L. & N. R. R. Co. v. Int. Com. Com., 184 Fed. 118. What complaint should show. Stuarts Draft Milling Co. v. So. Ry. Co., 3 I. C. C. 623. The Commission has power to investigate the true situation with respect to all matters properly affecting the questions involved. So. Ry. Co. v. United States, 204 Fed. 465, Opin. Com. Ct. No. 82, p. 603. Commission's findings "supported by substantial, though conflicting, evidence," are conclusive on the courts. Louisville & N. R. Co. v. U. S., 238 U. S. 1, 59 L. Ed. 1177, 35 Sup. Ct. 696.

**Notes of Decisions Rendered Since 1915.**

Section cited. Car Supply Investigation, 42 U. S. 657, 672. Shippers not parties to proceedings before the Commission cannot sue to set aside its orders. They have ample remedy under this section to file complaints. United States v. Merchants & M. Traffic Asso., 242 U. S. 178, 61 L. Ed. 233, 37 Sup. Ct. 24. Section cited. Louisville & N. R. Co. v. Ohio Valley Tie Co., 242 U. S. 288, 61 L. Ed. 305, 37 Sup. Ct. 120.

§ 393. **Commission May on Its Own Motion Institute Investigations.**—Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or Commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is

authorized to be made, to or before said Commission by any provision of this act, or concerning which any question may arise under any of the provision of this act, or relating to the enforcement of any of the provisions of this act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had, excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Paragraph 2 of Sec. 13 as amended by the Act of June 18, 1910. The original paragraph read:

Said Commission shall in like manner investigate any complaint forwarded by the Railroad Commissioner or Railroad Commission of any state or territory, at the request of such Commissioner or Commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

**Notes of Decisions Rendered Since 1909.**

Last sentence of section cited. Lum v. G. N. Ry. Co., 21 I. C. C. 558, 561; Minneapolis Civic & Commerce Ass'n v. C. M. & St. P. Ry. Co., 30 I. C. C. 663, 670; Philadelphia R. Co. v. United States, 219 Fed. 988.

See also notes next preceding section.

§ 393A. **Procedure When State Rates Involved.**—Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any

State having regulatory jurisdiction over the class of persons and corporation subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

Paragraph 3, to Section 13 added by Transportation Act 1920, section 416. The procedure here authorized is substantially that which the Commission had theretofore followed.

§ 393B. **Order of Commission Binding Notwithstanding State Laws.**—Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge or th e,maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carrier parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

This provision, being paragraph 4 of section 13 contained in Transportation Act 1920, Section 416, adds nothing to the authority fully sustained in the Shreveport Case section 44 *ante.*

§ 394. **Reports of Commission on Investigations, How Made and Published.**—That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and case damages are awarded such report shall include the finding of fact on which the award is made.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

The Commission may provide for the publication of its report and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of several states without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

Section fourteen as amended by the Acts of March 2, 1889, and June 29, 1906, paragraphs numbered 1 to 3 by Transportation Act 1920, Sec. 417.

The original Act read:

"That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commissions are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found.

"All report of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of."

The Act of March 2, 1889, added the last paragraph of the present section.

Under the original Act, construing section fourteen with section ten, the Commission held that it must be a "willful" violation of the Act to authorize it to make a recommendation of reparation. Railroad Com. of Fla. v. Savannah, Fla. & W. R. Co., 5 I. C. C. 13, 136, 3 I. C. R. 688, 693, 750. Section cited, Washer Grain Co. v. Mo. Pac. R. Co., 15 I. C. C. 147, 153; Arkansas Fuel Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. 95, 98. Section recited in course of opinion. Int. Com. Com. v. Cincinnati, N. O. & T. P. R. Co., 64 Fed. 981, 983, 13 U. S. App. 700; Int. Com. Com. v. L. & N. R. Co., 73 Fed. 409, 414. What the report should show. Order will be set aside when the Commission excludes relevant evidence, or fails to give consideration thereto. Tex. & Pac. R. Co., v. Int. Com. Com., 162 U. S. 197, 40 L. Ed. 940, 16 Sup. Ct. 666. Effect of the Commission's finding with reference to the classification of a commodity. Int. Com. Com. v. Cincinnati, H. & D. Ry. Co., 146 Fed. 559. Affirmed. Cincinnati, H. & D. R. Ry. Co. v. Int. Com. Com., 206 U. S. 142, 51 L. Ed. 995, 27 Sup. Ct. 648. Effect given to the finding of the Commission fixing a reconsignment charge. St. Louis Hay & Grain Co. v. So. Ry. Co., 149 Fed. 609. Affirmed. So. Ry. Co., v. St. Louis Hay & Grain Co., 153 Fed. 728, 82 C. C. A. 614. Reversed holding that the Commission erred in law in fixing a reconsignment charge at the actual cost thereof, the carrier being entitled to a profit. So. Ry, Co. v. St. Louis Hay & Grain Co., 214 U. S. 297, 53 L. Ed. 1004, 29 Sup. Ct. 678.

**Notes of Decisions Rendered Since 1909.**

Cited. Arkanas Fuel Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 95, 98. Finding of facts required when award of damages made. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 382. No sufficient findings of fact. Lehigh V. R. Co., v. Clark, 207 Fed. 717, 125 C. C. A. 235. See order of the

Commission denying reparation. Naylor & Co. v. L. V. R. Co., 15 I. C. C. 9; but, on rehearing, reparation ordered, Unrep. Opin. 168, 18 I. C. C. 624. Distinction between reparation and general orders. Lehigh Valley R. Co. v. Meeker, 211 Fed. 785, reversing Meeker v. L. V. R. Co., 175 Fed. 320, 162 Fed. 354, and Meeker v. Lehigh V. R. Co., 236 U. S. 412, 434, 59 L. Ed. 644, 35 Sup. Ct. 328, 337 and Sec. 383, *supra*.

**Notes of Decisions Rendered Since 1915.**

Commission may permit amendments dealing with transactions accruing after filing original complaint. Lehigh V. R. Co. v. American Hay Co., 219 Fed. 539, 135 C. C. A. 307. Findings may "be contained in the colloquial statements of an opinion." N. Y. C. R. Co. v. Murphy, 224 Fed. 401, 140 C. C. A. 111. Findings in separate reports in the same case looked to. Chicago M. & St. P. Ry. Co. v. Geo. A. Hormel & Co., 240 Fed. 381, 153 C. C. A. 307.

§ 395. **Power of Commission to Determine and Prescribe Just and Reasonable Rates, Regulations and Practices.**— That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maxi-

mum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

Paragraph 1 section 15 as amended by Transportation Act 1920. It will be noted that minimum rates, etc., may be prescribed, a power not had by the Commission prior to the amendment. The section prior to this amendment read:

That whenever, after full hearing of a complaint made as provided in section thirteen of this act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the Commission shall be of opinion that any individuals or joint rates or charges whatsoever demanded, charged or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of this act, or that any individual or joint classifications, regulations or practices whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonably or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is

just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

First part of paragraph 1, Sec. 15 as amended by Act of June 18, 1910. Prior to this amendment the Act read:

That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in section thirteen of this act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates, or charges whatsoever, demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this act for the transportation of persons or property as defined in the first section of this act, or that any regulations or practices whatsoever affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, to the extent to which the Commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed.

First part of section fifteen, as added by the Act of June 29, 1906.

The original section read:

"That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of

witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggreived in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of the law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law."

The oiginal Act gave the Commission power not only to determine what rates were unreasonable, but what were reasonable. Coxe Bro. & Co. v. Lehigh V. R. Co., 4 I. C. C. 535, 577, 578, 3 I. C. R. 460, 478. Order not enforced. Int. Com. Com. v. Lehigh V. R. Co., 74 Fed. 784; Murphy, Wasey & Co. v. Wabash R. Co., 5 I. C. C. 122, 3 I. C. R. 725, 726. Power to prescribe rates exercised. Merchants Union of Spokane v. N. Pac. R. Co., 5 I. C. C. 478, 4 I. C. R. 183, 198. Order not enforced. Farmers Loan & Trust Co. v. N. Pac. R. Co., 83 Fed. 249; Freight Bureau of Cincinnati v. Cincinnati, N. O. & T. P. Ry. Co., 6 I. C. C. 195, 4 I. C. R. 592, 617. Order not enforced. Int. Com. Com. v. Cincinnati, N. O. & T. P. Ry. Co., 76 Fed. 183, 167 U. S. 479, 42 L. Ed. 243, 17 Sup. Ct. 986. The Supreme Court having intimated in Cincinnati, N. O. & T. P. Ry. Co. v. Int. Com. Com., 162 U. S. 184, 40 L. Ed. 935, 16 Sup. Ct. 700, 5 I. C. R. 391, and having held in Int. Com. Com. v. Cincinnati, N. O. & T. P. Ry. Co., 167 U. S. 479, 42 L. Ed. 243, 17 Sup. Ct. 896, that the Commission had no power to fix rates, the Com-

mission, after citing these cases, refused to exercise such power. Carey v. Eureka Springs R. Co., 7 I. C. C. 286, 319. The power the Commission had and exercised before the Act of June 29, 1906, was practically to prescribe the old rate as the rate for the future when an advance was declared illegal. For illustration, see Tift v. So. Ry. Co., 10 I. C. C. 548, and Central Yellow Pine Asso. v. Ill. Cent. R. Co., 10 I. C. C. 505, where an advance was declared illegal, and Southern Pine Lumber Co. v. So. Ry. Co., 14 I. C. C. 195, and Nicola Stone & Meyers Co. v. L. & N. R. Co., 14 I. C. C. 198, where the full advance was decided to be the measure of reparation. No order made because of lack of authority to fix rates. Hastings Malting Co. v. Chicago, M. & St. P. Ry. Co., 11 I. C. C. 675. The old law gave power to determine how much reparation should be awarded and thereby to determine to what extent a rate was excessive; the amendment gave the additional power to prescribe what rate should be collected in the future. Cattle Raisers' Asso. v. Mo., Kan. & Tex. Ry. Co., 12 I. C. C. 1, 3. Section construed with reference to elevator allowances. Re Allowances to Elevators, 12 I. C. C. 85. Distribution of coal cars is a regulation and practice affecting rates under this section. Railroad Com. of Ohio v. Wheeling & L. E. R. Co. 12 I. C. C. 398; Rail & River Coal Co. v. B. & O. R. Co., 14 I. C. C. 86. Rules as to who shall load and unload freight subject to the jurisdiction of this Commission under this section. Wholesale Fruit & Producers Asso. v. A. T. & S. F. Ry. Co., 14 I C. C. 410, 421. Section with section fourteen contemplates awards of money by the Commission. Washer Grain Co. v. Mo. Pac. Ry. Co., 15 I. C. C. 147, 153. Gives power to fix rates for the future and award reparation for the past. Arkansas Fuel Co. v. Chicago, M. & St. P. R. Co., 16 I. C. C. 95, 96. Whether or not the Commission had power to fix maximum rates prior to the Act of June 29, 1906, was first mooted and doubted in the Supreme Court in the cases of Cincinnati, N. O. & T. P. R. Co. v. Int. Com. Com., 162 U. S. 184, 40 L. Ed. 935, 16 Sup. Ct. 700, and Tex. & Pac. Ry. Co. v. Int. Com. Com., 162 U. S. 197, 40 L. Ed. 940, 16 Sup. Ct. 666, and such power was definitely declared not to have been given the Commission in the case of Int. Com.

Com. v. Cincinnati, N. O. & T. P. R. Co., 167 U. S. 479, 42 L. Ed. 243, 17 Sup. Ct. 896. Subsequently these case were followed by the inferior courts. See Fed. Stat. Ann. vol. 3, p. 840.

Section fifteen of the old Act is little like the Hepburn Amendment. Therefore, citations to the former are not directly applicable to the present section. Construing this section with others, from twelve to eighteen, inclusive, held that "the Commission is invested with only administrative powers of supervision and investigation, which fall far short of making the board a court, or its action judicial, in the proper sense of the term." Kentucky & I. Bridge Co. v. L. & N. R. Co., 37 Fed. 567, 613. Section required notice to be given carrier to cease violations of Act. Int. Com. Com. v. Detroit, G. H. & M. R. Co., 57 Fed. 1005, 1008, 4 I. C. R. 722. While the proceedings of the Commission are not judicial, its procedure should substantially conform to that before a court. Int. Com. Com. v. L. & N. R. Co., 73 Fed. 409, 414. When the Commission adopts an erroneous principle in arriving at a conclusion, its order based thereon will not be judicially enforced. Int. Com. Com. v. Lehigh V. R. Co., 74 Fed. 784, 787.

While the Hepburn Act gives power to the Commission to fix rates, courts may enjoin advance until the Commission can determine whether or not the advance is legal. Kiser v. Cent. of Ga. Ry. Co., 158 Fed. 193, 198. The Commission may make a finding without being embarrassed by admissions in complaint. Cincinnati, H. & D. R. Co. v. Int. Com. Com., 206 U. S. 142, 149, 51 L. Ed. 995, 998, 27 Sup. Ct. 648. Immaterial error of law not ground to set aside order of Commission which is given the force "due to the judgments of a tribunal appointed by law and informed by experience." Ill. Cent. R. Co. v. Int. Com. Com., 206 U. S. 441, 454, 51 L. Ed. 1128, 1134, 27 Sup. Ct. 700. Some orders of the Commission entered since the passage of the Hepburn Act have reached the courts. In Stickney v. Int. Com. Com. 164 Fed. 638, 644, the circuit judge said: "This court has ample jurisdiction to set aside or suspend any order of the Commission resulting from a misconception and misapplication of a law to conceded or undisputed facts." In Mo., Kan. & Tex. R.

Co. v. Int. Com. Com., 164 Fed. 645, the circuit judge held: That the same rules of law applied when a suit was brought to enjoin an order of the Commission as when brought to enforce such order, and when complainant's case for an injunction was "wanting in that certainty, fullness, and persuasive force which ought to be, and is, essential to overcome the force of the Commission's finding or determination upon which the order is based," a preliminary injunction was denied. Injunctions granted against order of Commission for error in law. Delaware, L. & W. R. Co. v. Int. Com. Com., 166 Fed. 498; same style case, 166 Fed. 499. Stickney case, supra, C. R. I. & P. R. Co. v. Int. Com. Com. (Mo. River Rate Case), 171 Fed. 680. Injunctions denied. So. Pac. Ter. Co. v. Int. Com. Com., 166 Fed. 134; Mo., Kan. & Tex Ry. case, *supra*.

**Notes of Decisions Rendered Since 1909.**

This section is the dominating and controlling expression of the meaning of the Act. Joynes v. P. R. Co., 17 I. C. C. 361. Wide authority given the Commission. Commutation Rate case, 21 I. C. C. 428, 431; Central Com. Co. v. L. & N. R. Co., 27 I. C. C. 114, 115. Coal Rates from Oak Hill, Colo., 30 I. C. C. 505, 508. Full hearing required. Douglass & Co v. C. R. I. & P. Ry. Co., 21 I. C. C. 541, citing So. Pac. Co. v. Int. Com. Com., 219 U. S. 433, 55 L. Ed. 283, 31 Sup. Ct. 288; Int. Com. Com. v. L. & N. R. Co., 277 U. S. 88, 57 L. Ed. 431, 33 Sup. Ct. 185, and cases cited. Commission has authority to determine how cars shall be distributed. Int. Com. Com. v. I. C. R. Co., 215 U. S. 452, 54 L. Ed. 280, 30 Sup. Ct. 163; Int. Com. Com. v. C. & A. R. Co., 215 U. S. 479, 54 L. Ed. 291, 30 Sup. Ct. 155. For history of the order here involved see: Chicago & A. R. Co. v. Int. Com. Com., 172 Fed. 930; Traer v. C. & A. R. Co., 13 I. C. C. 451. Other cases bearing upon the question. Ry. Com. of Ohio et. al. v. Hocking Valley Ry. Co. et. al., 12 I. C. C. 398; U. S. ex rel. Pitcairn Coal Co. v. B. & O. Ry. Co., (C. C.),.154 Fed. 108; Logan Coal Co. v. Pa. Ry. Co. (C. C.), 154 Fed. 497.

The Commission can not condemn a rate which is not unreasonable, for the purpose of encouraging an industry. So.

Pac. Co. v. I. C. C., 219 U. S. 433, 55 L. Ed. 283, 31 Sup. Ct. 288. See further history of case: So. Pac. Co. v. Int. Com. Com., 177 Fed. 963; same styled case, 215 U. S. 226, 54 L. Ed. 169, 30 Sup. Ct. 89; Western Oregon Lumber Mfgrs. Asso. v. So. Pac. Co., 14 I. C. C. 61. The Commission must act by formal order. Am. Sugar Refining Co. v. D. L. & W. R. Co., 207 Fed. 733, 125 C. C. A. 251, reversing same styled case, 200 Fed. 652. The statute gives the right to a full hearing and that confers the privilege of introducing testimony and at the same time imposes the duty of deciding in accordance with the facts proved. Int. Com. Com. v. L. & N. R. Co., 227 U. S. 88, 57 L. Ed. 431, 33 Sup. Ct. 185, reversing L. & N. R. Co., v. Int. Com. Com., 195 Fed. 541. For Commission's decision see New Orleans Board of Trade v. L. & N. R. Co., 17 I. C. C. 231. In the opinion of the Supreme Court is cited the authorities in which the force of an order of the Commission is discussed. See also Louisville & N. R. Co. v. U. S. 238 U. S. 1, 59 L. Ed. 1177, 35 Sup. Ct. 696.

§ 396. **When Orders Take Effect and How Long Continue Unless Modified or Set Aside by the Commission or a Court.**— Except as otherwise provided in this Act, all orders of the Commission, other than orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

Paragraph 2 section 15 as changed by Transportation Act 1920 section 418. The former section read:

All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction.

Second part of paragraph one of section fifteen as added by Act of June 29, 1906.

Cited, Mo., Kan. & Tex. Ry. Co. v. Int. Com. Com., 164 Fed. 645, 649.

**Notes of Decisions Rendered Since 1909.**

A finding without evidence is beyond the power of the Commission, and must be "set aside by a court of competent jurisdiction." Int. Com. Com. v. L. & N. R. Co., 227 U. S. 88, 33 Sup. Ct. 185, cited next preceding section. See also Tang Tun v. Edsell, 223 U. S. 673, 681, 56 L. Ed. 606, 32 Sup. Ct. 359; Low Wah Suey v. Backus, 225 U. S. 460, 468, 56 L. Ed. 1165, 32 Sup. Ct. 734; Zakonite v. Wolf, 226 U. S. 272, 57 L. Ed. 218, 32 Sup. Ct. 31; United States v. B. & O. S. W. R. R., 226 U. S. 14, 57 L. Ed. 104, 33 Sup. Ct. 5; Atlantic C. L. v. North Carolina Corp. Com., 206 U. S. 1, 20, 51 L. Ed. 933, 27 Sup. Ct. 585; Wisconsin, M. P. R. Co. v. Jacobson, 179 U. S. 287, 301, 45 L. Ed. 194, 21 Sup. Ct. 115; Oregon Railroad v. Fairchild, 224 U. S. 510, 56 L. Ed. 863, 32 Sup. Ct. 55; I. C. C. v. Illinois Central, 215 U. S. 452, 470, 54 L. Ed. 280, 30 Sup. Ct. 155; So. Pac. Co. v. Int. Com. Com., 219 U. S. 433, 55 L. Ed. 283, 31 Sup. Ct. 288; Muser v. Magone, 155 U. S. 240, 247, 39 L. Ed. 135, 15 Sup. Ct. 77.

§ 396A. **Through Routes and Joint Rates May Be Established by the Commission.**—The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line. The Com-

mission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character; nor shall the Commission have the right to establish any route, classification, or practice, or any rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water.

Paragraph 3 section 15 as amended by Transportation Act 1920 section 418. The former section, section 400, 2d Ed., read:

The Commission may also, after hearing, on a complaint or upon its own initiative without complaint establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as herenbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line. The Commission shall not, however, establish any through route, classification, or rate between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business and railroads of a different character, nor shall the Commission have the right to establish any route, classification, rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this act shall be subject to the laws and regulations applicable to transportation by water.

Par. 3 of Sec. 15 as amended by Act June 18, 1910. The old law read:

The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which

such through routes shall be operated, when that may be necessary to give effect to any provision of this act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

Second paragraph of section fifteen added by Act June 29, 1906.

The power conferred by this section did not exist until this amendment was passed. See annotation next preceding section. The proviso to this section prevents new lines from forcing joint traffic arrangements when satisfactory through routes exist. Chicago & M. Elec. R. Co. v. Ill. Cent. R. Co., 13 I. C. C. 20. Through route established under this section. Pacific Coast Lumber Mfgrs. Asso. v. N. Pac. Ry. Co., 14 I. C. C. 51; Enterprise Fuel Co. v. Penn. R. Co., 16 I. C. C. 219, 220, 222.

**Notes of Decisions Rendered Since 1909.**

Former and present statutes compared. C. & C. Traction Co. v. B. & O. S. W. R. R. Co., 20 I. C. C. 486. Section quoted and discussed. Brook-Rauch Mill & Elevator Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 651, 654. Statute discussed and decisions under the common law cited. Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 421. "Railroads of a different character" and "through route" defined. Kansas City v. K. C. V. & T. Ry. Co., 24 I. C. C. 22, 26. The Commission has a discretion under the amendment. Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 185; Crane Iron Works v. U. S., 209 Fed. 238, Op. Com. Ct. No. 55, p. 453. See Crane R. R. Co. v. P. & R. Ry. Co., 15 I. C. C. 248; Crane Iron Works v. C. R. R. Co. of N. J., 17 I. C. C. 514; Truckers Transfer Co. v. C. & W. C. R. R. Co., 27 I. C. C. 275, 277.

Section cited: Wichita Falls System Joint Coal Rate cases, 26 I. C. C. 215, 222; St. L. & St. P. R. R. Co. v. P. & P. N. Ry. Co., 26 I. C. C. 226, 234; Texas Cement Products Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 508, 510. Lumber Rates

from Texas, 28 I. C. C. 471, 473; Rates on Lumber and Other Forest Products, 30 I. C. C. 371, 372. No connection ordered with a plant facility. Mfgrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 120. The grant of this authority contemplates the exercise of judgment. Merchants & Mfgrs. Ass'n v. C. R. R. of N. J., 30 I. C. C. 396. 401, citing cases. The practice of the Commission stated, citing cases. Decatur Navigation Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 287. An order of the Commission made prior to the effective date of the amendment of 1910 cannot be made effective by the courts under that amendment. Omaha & C. B. St. Ry. Co. v. Int. Com. Com., 230 U. S. 324, 57 L. Ed. 1501, 33 Sup. Ct. 890, 46 L. R. A. (N. S.) 385; reversing same styled case, 191 Fed. 40, Opin. Com. Ct. No. 25, p. 147. See further history of this case: West End Improvement Club v. O. C. B. Ry. & Bridge Co., 17 I. C. C. 239; O. & C. B. St. Ry. & Bridge Co. v. I. C. C., 179 Fed. 243. Limitation under former statute discussed. Int. Com. Com. v. N. P. R. Co., 216 U. S. 538, 54 L. Ed. 608, 30 Sup. Ct. 417. See Sec. 338, *supra*.

**Notes of Decisions Rendered Since 1915.**

Section does not violate fifth amendment to constitution. Paducah Board of Trade v. I. C. R. Co., 43 I. C. C. 537, 540 and case cited. No through route with street car company. James v. W. & O. D. Ry. Co., 44 I. C. C. 570, 573 and case cited; St. Louis S. W. R. Co. v. United States, 245 U. S. 136, 62 L. Ed. 199, 38 Sup. Ct. 49.

§ 396B. **Limitations on the Power to Prescribe Through Routes.**—In establishing any such through routes the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line), require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established:

Provided, That in time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.

Paragraph 4 of section 15 as amended by Transportation Act 1920. The former section, section 401, 2d Ed., read:

And in establishing such through route the Commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established.

Par. 4, Sec. 15, added by amendment of June 18, 1910. Limitation stated, Cincinnati & Traction Co. v. B. & O. S. W. R. R. Co., 20 I. C. C. 486, 492. The Commission must work under the limitation imposed. Rates on Meats, 23 I. C. C. 656, 662. The law recognizes the right of the carrier to protect its own haul. Chamber of Commerce of N. Y. v. N. Y. C. & H. R. R. Co., 24 I. C. C. 55, 76. Limitation applied. Davis Bros. Lumber Co. v. C. R. I. & P. Ry. Co., 26 I. C. C. 257, 259. This section gives the carrier no right "to exclude from points of consumption on its line manufacturers located elsewhere." Meridian Fertilizer Factory v. T. P. Ry. Co., 26 I. C. C. 351, 352. Route found unreasonably long. Omaha Grain Exchange v. C. B. & Q. R. R. Co., 26 I. C. C. 553, 557; United States v. N. P. R. R. Co., 28 I. C. C. 518, 523; Hughes Creek C. Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 679. Does not apply to making joint rates, through routes having been voluntarily established. Rates on Cotton Seed and Its Products, 28 I. C. C. 219, 221; Lumber Rates Oregon & Washington to Eastern Points, 29 I. C. C. 609. Cancellation of through routes not justified. Lumber Rate from North Pacific

Coast Points, 30 I. C. C. 111. Section applied. Cement Rates from Mason City, Iowa, 30 I. C. C. 426, 430. This limitation does not prevent ordering through routes with another carrier when such through routes have been voluntarily established with one carrier. Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472. Carriers cannot insist on this Section when they have voluntarily established one through route or when to deny a through route would continue an unjust discrimination. Decatur Nav. Co. v. L. & N. R. Co., 31 I. C. C. 281; Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472; Eastern Shore Develop. S. S. Co. v. B. & O. R. Co., 32 I. C. C. 238; U. S. Button Co. v. C. R. & P. Ry. Co., 32 I. C. C. 149; Penn. Co. v. U. S., 236 U. S. 351, 59 L. Ed. 616, 35 Sup. Ct. 370. Switching may be ordered for one shipper only. Union Lime Co. v. C. & N. W. R. Co., 233 U. S. 211, 58 L. Ed. 924, 34 Sup. Ct. 522.

Carriers may cancel through routes which they could not have been compelled to establish. The Ogden Gateway case, 35 I. C. C. 131.

**Notes of Decisions Rendered Since 1915.**

Ogden Gateway Case, *supra,* followed. Grain to Arkansas Points, 40 I. C. C. 49. Section applied. Jackson Chamber of Commerce v. N. Y. C. R. Co., 42 I. C. C. 155; Iowa & S. W. Ry. Co. v. C. B. & Q. R. Co., 42 I. C. C. 389. Lake and Rail Cancellations. 42 I. C. C. 513, 516; Grain from Missouri Points, 43 I. C. C. 737; West Coast Lumber Mfrs. Asso. v. T. E. R. R. Co., 45 I. C. C. 227. St. Louis, S. W. R. Co. v. United States, 245 U. S. 136, 62 L. Ed. 189, 38 Sup. Ct. 42.

§ 396C. **Delivery of Ordinary Live Stock.**—Transportation wholly by railroad of ordinary livestock in car-load lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route, delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee or owner, except in cases where the unloading or reloading en route is at the request of the shipper, consignee or owner, or to try an intermediate market, or to comply with

quarantine regulations. The Commission may prescribe or approve just and reasonable rules governing each of such excepted services. Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers now existing by virtue of law respecting the transportation of other than ordinary livestock, or the duty of performing service as to shipments other than those to or from public stockyards.

Paragraph 5 section 15 added by Transportation Act 1920 section 418.

§ 397. **Division of Joint Rate May Be Prescribed by Commission.**—Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers. and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and

any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

Paragraph 6 of section 15 as amended by Transportation Act 1920, section 418. The former section read:

Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

Last part of paragraph one of section fifteen as added by Act of June 29, 1906.

Before the amended Act Commission had no authority to compel carriers to make joint rates. Re Application of F. W. Clark, 3 I. C. C. 649, 2 I. C. R. 797; Commercial Club of Omaha v. Chicago, R. I. & Pac. Ry. Co., 6 I. C. C. 647, 677; Fred G. Clark Co. v. Lake Shore & M. S. Ry. Co., 11 I. C. C. 558. Re Alleged Unlawful Discrimination Against Enterprise Transportation Co., 11 I. C. C. 587; Ky. & I. Bridge Co. v. L. & N. R. Co., 37 Fed. 567; Little Rock & M. R. Co. v. St. L., I. M. & S. Ry. Co., 41 Fed. 559; Chicago & N. W. Ry. Co. v Osborne, 52 Fed 912, 915, 3 C. C. A. 347; Memphis & L. R. R. Co. v. So. Express Co. (Express cases), 117 U. S. 1, 29 L. Ed. 791, 6 Sup. Ct. 542, 628; So. Pac. v. Int. Co. Com., 200 U. S. 536, 553, 50 L. Ed. 585, 593, 20 Sup. Ct. 330. Under the Hepburn law, in fixing a division of joint rates between carriers, all circumstances should be considered and such divisions should not be on a mileage or other fixed basis. Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co., 14 I. C. C. 364.

**Notes of Decisions Rendered Since 1909.**

The power to prescribe divisions is a continuing power. Rates on Lumber and Other Forest Products, 30 I. C. C. 371, 372. The power exercised, People's Fuel Co. v. Grand T. W. Ry. Co., 30 I. C. C. 657; Coal Rates from Oak Hills, Colo.,

35 I. C. C. 456; Texas Cement Plaster Co. v. St. Louis & S. F. R. Co., 26 I. C. C. 508, 510. Dispute over divisions no justification for increasing rates. New Mexico Coal Rates, 28 I. C. C. 328; Missouri River Illinois Wheat & Flour Rates, 27 I. C. C. 286; Advances on Ground Iron Ore, 26 I. C. C. 675. Divisions established without previously fixing joint rates. Louisville Board of Trade v. I. C. & S. Traction Co., 34 I. C. C. 640. The words "or otherwise" would seem to make clear the power of the Commission in all cases of a dispute over divisions.

**Notes of Decisions Rendered Since 1915.**

Divisions prescribed. Port Huron & D. S. S. Co. v. P. R. Co., 40 I. C. C. 335. The text, *supra*, ending notes of 2nd ed. of this book followed and former decisions overruled. Morgantown & Kingwood Divisions. 49 I. C. C. 540. For an interesting discussion of divisions to industrial roads see National Tube Company v. L. T. R. Co., 55 I. C. C. 469 and the comprehensive dissenting opinion in the same case of Mr. Commissioner Eastman, 56 I. C. C. 272, citing numerous cases. Powers of Commission sustained. O'Keefe v. United States, 240 U. S. 294, 60 L. Ed. 651, 36 Sup. Ct. 313.

§ 398. **Right to Suspend Proposed Increases in Rates.**—Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regu-

lation, or practice, but not for a longer period than one hundred and twenty days beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If any such hearing cannot be concluded within the period of suspension, as above stated, the Commission may extend the time of suspension for a further period not exceeding thirty days, and if the proceeding has not been concluded and an order made at the expiration of such thirty days, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period, but, in case of a proposed increased rates or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid such portion of such increased rates or charges as by its decision shall be found not justified.

First part of paragraph 7 of section 15 as amended by Transportation Act 1920 section 418.

The Hoke Smith Amendment approved August 9, 1917, Comp. Stat. 1919, Sec. 8583 read: "Provided, further, until January first, nineteen hundred and twenty, no increased rate, fare or charge, or classification shall be filed except after approval thereof has been secured from the Commission. Such approval may, in the discretion of the Commission, be given without formal hearing, and in such case shall not affect any subsequent proceeding relative to such rate, fare, charge, or classification. (24 Stat. 384. 34 Stat. 589. 36 Stat. 551, 40 Stat. 272.) This amendment was not continued by 1920 act. The former statute read:

Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge,

or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such fare, rate, charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective: *Provided,* That if any such hearing cannot be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months.

This is a new provision enacted by the amendment of June 18, 1910, being part of par. 2, Sec. 15. The meaning of the section discussed. Advances in Rates, Eastern case, 20 I. C. C. 243, 247, 248; Advances in Rates, Western case, 20 I. C. C. 307, 310-314. No power to suspend a rate already effective. Rates on Lumber by V. S. & P. Ry. Co., 21 I. C. C. 16. "Propriety" of an advance considered. Advances in Rates on Grain, 21 I. C. C. 22, 24; Wickwire Steel & Wire Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 420; Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508. The Commission has the power to suspend reductions in rates in any case where such suspension will operate to prevent an ap-

parent discrimination. Suspension of Rates on Packing House Products, 21 I. C. C. 68, 70; Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508. In the last named case it was held that rates decreased are new rates. Relative Adjustment of Rates Considered. Rates of Cement from Md. to Va., 24 I. C. C. 290; Rates on Barley from California, 24 I. C. C. 664, 669. In re Advance in Class and Commodity Rates, 25 I. C. C. 401; In re Advance in Class Rates, 25 I. C. C. 268; In re Advances on Furniture, 25 I. C. C. 299; Wharton Steel Co. v. D. L. & W. R. R. Co., 25 I. C. C. 303; In re Advances on Oil, 25 I. C. C. 349; In re Advances Knitting Factory Products, 25 I. C. C. 634; In re Advances on Manganese Ore, 25 I. C. C. 663; Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J., 25 I. C. C. 653; Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 645; In re Advance on Hay, 25 I. C. C. 680; Taylor v. N. & W. Ry. Co., 25 I. C. C. 613; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625; Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 141; In re Advances on Live Stock, 25 I. C. C. 63; In re Advances on Hops, 25 I. C. C. 16; Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342. But when the proposed increase does not change the adjustment the relation not determined. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 557. Proposed rates may be suspended when they create unlawful discrimination. Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 420. The Commission held to have power to cancel a tariff which "affected a practice and a rate." A. T. & S. F. R. Co. v. U. S., "Precooling Case," 232 U. S. 199, 58 L. Ed. 568, 34 Sup. Ct. 291, affirming same styled case, 204 Fed. 647, Op. Com. Ct. No. 41, p. 627. For report of the Commission see Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106. Suspension Regulations Relating to Precooling, 23 I. C. C. 267. The "propriety" of a rate is in issue where proposed increased rates are under investigation, Wickwire case supra and Transcontinental Commodity Rates, 32 I. C. C. 449. Whether the existence of lower intrastate rates should be a sufficient reason to refuse increased rates otherwise just and reasonable is an unsettled question. The practice of the Commission has been to presume that state rates will be ad-

justed and if not the question should properly be determined on a formal complaint.

Rates on poultry in Western Trunk Line Territory, 32 I. C. C. 380; Five Per Cent case, 31 I. C. C. 355; Corp. Com. of Okla. v. A. T. & S. F. R. Co., 31 I. C. C. 532, 540, 541; Rates on Beer and Other Malt Products, 31 I. C. C. 544. Dissenting Opin. Western Advance Rate case, 35 I. C. C. 668 *et seq.*

Seemingly applying a contrary principle, see Class Rates between Stations in La., 33 I. C. C. 302; Western Rate Advance Case 1915, 35 I. C. C. 497; Live Stock Rates from Colo., 35 I. C. C. 682.

§ 399. **Burden of Proof to Justify Rates Increased after Jan. 1, 1910.**—At any hearing involving a rate, fare, or charge increased after January 1, 1910, or of a rate, fare, or charge sought to be increased after the passage of this Act, the burden of proof to show that the increased rate, fare, or charge, or proposed increased rate, fare, or charge, is just and reasonable shall be upon the carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

Last part of paragraph 7 section 15 as amended by Transportation Act 1920 section 418. The former section read:

At any hearing involving a rate increased after January first, nineteen hundred and ten, or of a rate sought to be increased after the passage of this act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

Part of Paragraph 2 Section 15 added by amendment of June 18, 1910.

Prior to this amendment the Commission had held with more or less definiteness that a rate long in existence was presumed to be reasonable, Sec. 102 *ante*. This amendment is discussed by the Commission in Advance in Rates—Eastern case, 20 I. C. C. 243. Advances in Rates—Western case, 20

I. C. C. 307, 314, 315, 316. At p. 315 of the report in the last named proceeding the Commission held that "burden of proof" did not have the same technical meaning given the phrase in the courts of law, and the Commission said: "In accepting this theory, therefore, it is not within belief that Congress intended by the language now under consideration to convert this Commission into a tribunal which should merely determine as between two sides the preponderance of evidence and base its decisions upon technical and somewhat archaic rules of evidence." "The railroad must assume to prove to this Commission that the new and the increased rates are within the words of description and limitation used in the act; that is, that they are just and reasonable. And to say that they must prove this is to say that they must satisfy our minds of this fact."

General adjustment left to the carrier when rates proposed to be increased were cancelled. Advances in Rate on Grain, 21 I. C. C. 22, 35. When no testimony is offered burden not met. Rates for Transportation of Locomotives, 21 I. C. C. 103, 111. Proof of increased cost of transportation should be directed to the particular transportation affected by the proposed increase. Victor Mfg. Co. v. S. Ry. Co., 21 I. C. C. 222, 226. Advance of Commodity Rate under claim that such rate was not properly proportioned to all rates considered. U. S. Leather Co. v. So. Ry. Co., 21 I. C. C. 323, 325. Cancellation of a through rate, leaving a combination of locals higher than the through rate puts the burden on the carrier. Rates on Lumber and Other Forest Products, 21 I. C. C. 455. Suspensions of Advances on Soft Coal, 23 I. C. C. 518, 519. Burden on carrier to justify increased carload minimum. Advance in Rates on Potatoes, 23 I. C. C. 69. Statement made that admission of complainant relieved defendant of burden of proof. Wisconsin State Millers' Assn. v. C. M. & St. P. Ry. Co., 23 I. C. C. 494, 495. Refusal of one carrier to accept for a through haul less than its full locals fails to meet the burden of proof. Advance in Rates on Cement from Md. to Va., 24 I. C. C. 290, 291. Discriminatory increased charges cancelled. Switching Ice in Chicago, 24 I. C. C. 660. That an advance is of not "great consequence" does not relieve from the statute. Rates on Corn, Oats and Other Feed, 25

I. C. C. 46. The burden of proof applies to the total charges and the separately stated charges which make the total. Pacific Fuel & Supply Co. v. G. T. W. Ry. Co., 27 I. C. C. 24. Notwithstanding the statute, parties who obtain a suspension of rates should present facts to the Commission. Commodity Rates between Missouri River Points, 28 I. C. C. 265, 267. "Statements of earnings per ton mile and suggestions of increased general operating expenses" not sufficient. Kansas-Iowa Brick Rates, 28 I. C. C. 285, 287. Existing contracts for lower rates will not prevent an increase in rates. Rates on Carload Stone, 29 I. C. C. 136. The theory of equalization of rates not sufficient here. Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 419. Statute discussed. Five Per Cent Case, 31 I. C. C. 351, 448. That a commodity usually takes a class rate justifies increasing the rate to the class basis. Rates on Beer and other Malt Products, 31 I. C. C. 544. Not applied when rates were increased to the point where they normally had been. Corp. Com. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C. 532, 535, 536. Here the charge was increased and the burden of proof was on the carriers. Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 582. Cases discussed. East J. R. Co. v. C. R. R. of N. J., 36 I. C. C. 146.

Merely correcting fourth section violations does not meet burden. LaFayette Chamber of Commerce v. A. & V. Ry. Co., 39 I. C. C. 619. General permission to increase rates is not an approval of any particular rate. Globe Soap Co. v. A. & S. Ry. Co., 40 I. C. C. 121, 123. General statement of increased costs does not meet the burden. Kaw River Sand & Material Co. v. A. T. & S. F. Ry. Co., 42 I. C. C. 504, 508. Statute does not apply to initial rates, says the Commission. Bay State Milling Company v. Transit Corp., 43 I. C. C. 338; Cotton from New Orleans, 49 I. C. C. 751, 753. Provision applied. Manufacturer's R. Co. v. United States, 246 U. S. 457, 62 L. Ed. 831, 38 Sup. Ct. 383.

§ 400. **Shippers May Designate Routing.**—In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this act to any point of destination, between

which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this act provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: Provided, however, That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

Par. 5 Sec. 15 added by the amendment of June 18, 1910, paragraph 8 as numbered by Transportation Act 1920, section 419.

Ruling under prior law stated, and holding that tariff provisions cannot exempt the carrier from the duty imposed by this law. Weyl-Zuckerman & Co. v. C. M. Ry. Co., 27 I. C. C. 493, 495. When shippers instructions are not complete it is the duty of carriers to seek further instructions. Bruner Co. v. S. Ry. Co., 40 I. C. C. 549, 551; Reynolds Bros. Lumber Co. v. T. F. Ry. Co., 42 I. C. C. 421, 422. Duty stated. Wistar, Underhill & Nixon v. C. & O. Ry. Co., 43 I. C. C. 254, 256.

§ 401. **Reciprocal Duties of Carriers as to Routing.**—Whenever property is diverted or delivered by one carrier to another carrier contrary to routing instructions in the bill of lading, unless such diversion or delivery is in compliance

with a lawful order, rule, or regulation of the Commission, such carriers shall in a suit or action in any court of competent jurisdiction, be jointly and severally liable to the carrier thus deprived of its right to participate in the haul of the property, for the total amount of the rate or charge it would have received had it participated in the haul of the property. The carrier to which the property is thus diverted shall not be liable in such suit or action if it can show, the burden of proof being upon it, that before carrying the property it had no notice, by bill of lading, waybill or otherwise, of the routing instructions. In any judgment which may be rendered the plaintiff shall be allowed to recover against the defendant a reasonable attorney's fee to be taxed in the case.

Paragraph 9 section 15 added by Transportation Act 1920, section 420.

§ 402. **Rule as to Non Routed Traffic.**—With respect to traffic not routed by the shipper, the Commission may, whenever the public interest and a fair distribution of the traffic require, direct the route which such traffic shall take after it arrives at the terminus of one carrier or at a junction point with another carrier, and is to be there delivered to another carrier.

Paragraph 10 section 15 added by section 420 Transportation Act 1920.

§ 403. **Unlawful to Give or Receive Information Relative to Shipments.**—It shall be unlawful for any common carrier subject to the provisions of this act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose or to permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quality, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may

improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: Provided, That nothing in this act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any state or federal court, or to any officer or agent of the Government of the United States, or of any state or territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars.

Paragraphs 6 and 7 Sec. 15 added by the amendment of June 18, 1910, changed by section 421 Transportation Act 1920 to paragraphs 11 and 12.

This section indicates a legislative intent to secure shippers immunity from a disclosure of their business. Albree v. M. R. R. Co., 22 I. C. C. 303, 321. Possible violation of section suggested. Concentration of Cotton, 26 I. C. C. 585, 593. Purpose of section discussed, citing Conference Ruling 356, Re Freight Bills, 29 I. C. C. 496, 498. This statute did not prevent giving information of the unlawful transportation of liquor. Seaboard A. L. R. Co. v. North Carolina, 245 U. S. 298, 62 L. Ed. 299, 38 Sup. Ct. 96.

§ 404. **Charges for Instrumentalities Furnished by Shipper Must Be Reasonable.**—If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative,

determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect to be enforced in like manner as the orders above provided for under this section.

Paragraph 8 of Sec. 15 added by amendment of June 29, 1906 and the words italicized added by the amendment of June 18, 1910, changed to 13 by section 421 Transportation Act. 1920.

Storage and switching tracks within the inclosure of the shipper and established for his convenience will not furnish a basis for the shipper's claim for compensation for storing cars under this section. General Elec. Co. v. New York C. & H. R. R. Co., 14 I. C. C. 237, 242.

**Notes of Decisions Rendered Since 1909.**

Matter of Allowances, 12 I. C. C. 55, quoted as referring to the Statue. Federal Sugar Refining v. B. & O. R. R. Co. 17 I. C. C. 40, 47. The section has no application to a warehouse company not the owner of the commodity shipped. Merchants Cotton Compress & Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 105. Such allowances must be without discrimination. Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200. Cases discussing allowances cited and former holdings adhered to. Manufacturing Ry. Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 304, 315. Claims for allowances should be submitted to the Commission. Sterling & Son Co. v. M. C. R. R. Co., 21 I. C. C. 451, 454. Allowances for repairs on cars are of dangerous character. Balfour, Guthrie & Co. v. O. W. R. R. & Nav. Co., 21 I. C. C. 539, 540. Allowances to industries discussed. Manufacturers Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 101, 102. "Connected with such transportation" defined. Inman, Akers & Inman v. A. C. L. R. Co., 32 I. C. C. 146. Statute applied and allowances held legal. Union Pac. R. Co. v. Updike Grain Co., 222 U. S. 215, 56 L. Ed 171, 32 Sup. Ct. 39; Int. Com. Com. v. Diffenbaugh, 222 U. S. 42, 56 L. Ed. 83, 32 Sup. Ct. 22. The amount of the allowance must be reasonable, and what is

reasonable a question to be determined by the Commission. Mitchell Coal & Coke Co. v. P. R. Co., 230 U. S. 247, 57 L. Ed. 1472, 33 Sup. Ct. 916. The question is discussed in the several opinions and reports in the Sugar Lighterage case. United States v. B. & O. R. Co., 231 U. S. 274, 58 L. Ed. 218, 34 Sup. Ct. 75, affirming B. & O. R. Co., v. United States, 200 Fed. 779, Op. Ct. No. 38, p. 499, and setting aside the order of the Commission in the Federal Sugar Refining Co. v. B. & O. R. Co., 20 I. C. C. 200. See the related case of the Am. Sugar Refining Co. v. D. L. & W. Ry. Co., 200 Fed. 652, reversed American Sugar Refining Co. v. D. L. & W. R. Co., 207 Fed. 733, 125 C. C. A. 251. The Tap Line case involved the question, United States v. L. & P. R. Co., 234 U. S. 1, 58 L. Ed. 1185, 34 Sup. Ct. 741; Louisiana & P. Ry. Co. v. United States, 209 Fed. 244, Op. Com. Ct. No. 90, p. 709; The Tap Line case, 23 I. C. C. 277, 549, 31 I. C. C. 490. The provision does not apply where rate constructed on the theory that the shipper shall furnish the instrumentality. Best v. G. N. Ry. Co., 33 I. C. C. 1, 4.

**Notes of Decisions Rendered Since 1915.**

Payment to shipper must not be excessive. Mitchell Coal & Coke Co. v. P. R. Co., 38 I. C. C. 40; New Orleans Terminal Allowances, 42 I. C. C. 748, 754, cases cited; Lehigh C. & N. Co., v. P. R. R. Co., 50 I. C. C. 543; and see cases National Tube Co. v. L. T. R. Co., 55 I. C. C. 469, 56 I. C. C. 272. Recovery for services denied, there being no tariff provision therefor. Southern Cotton Oil Co. v. Cent. of Ga. R. Co., 228 Fed. 335. Unlawful payment in the form of an allowance under a lease. Cent. R. Co. of N. J. v. United States, 229 Fed. 501, 143 C. C. A. 569. Orders of Commission relating to allowances to elevators.. Omaha Elevator Co. v. Union P. R. Co., 249 Fed. 827, 162 C. C. A. 61. The issue is one of fact, not of law. Penn. R. Co. v. United States, 236 U. S. 351, 59 L. Ed. 617, 35 Sup. Ct. 370. State courts have no jurisdiction to determine allowances. Loomis v. L. V. R. Co., 240 U. S. 43, 60 L. Ed. 517, 36 Sup. Ct. 228

§ 405. **Enumeration of Powers of Commission Not Exclusive.**—The foregoing enumeration of powers shall not ex-

clude any power which the Commission would otherwise have in the making of an order under the provisions of this act.

Last paragraph of section fifteen added by Act June 29, 1906. Fourteenth Par. in Transportation Act 1920.

The statute gives shippers new rights but preserves existing rights. Copp v. L. & N. R. Co., 43 La. Ann. 511, 12 L. R. A. 725, 26 Am. St. Rep. 198, 9 So. 441; Carlisle v. Mo. Pac. R. Co., 168 Mo. 656, 68 S. W. 898; Western & A. R. Co. v. White Provision Co., 142 Ga. 246, 82 S. E. 644; Gulf, C. & S. F. R. Co. v. Moore, 98 Tex. 302, 83 S. W. 362, 4 Ann. Cas. 770; Puritan Coal Min. Co. v. Penn. R. Co., 237 Pa. 448, 85 Atl. 426, Ann. Cas. 1914B, 37; Mitchell Coal & Coke Co. v. Penn. R. Co., 230 U. S. 247, 57 L. Ed. 1473, 33 Sup. Ct. Rep. 916.

Compare Texas & P. R. Co. v. Abilene Cotton Co., 204 U. S. 426, 439-446, 51 L. Ed. 553, 561, 27 Sup. Ct. Rep. 350, 9 Ann. Cas. 1075; Robinson v. B. & O. R. Co., 222 U. S. 506, 56 L. Ed. 228, 32 Sup. Ct. Rep. 114; 36 Stat. at L. 551 (15), chap. 309, Comp. Stat. 1913, Sec. 8583; 38 Stat. at L. 220, chap. 32. Penn. R. Co. v. Puritan Coal Mining Co., 237 U. S. 121, 59 L. Ed. 867, 35 Sup. Ct. 484, 486, 487. Ill C. R. Co. v. Mulberry Hill Coal Co., 238 U. S. 275, 59 L. Ed. 1306, 35 Sup. Ct. 760, 763.

§ 405A. **Meaning of Words "Rates" and "Carriers".**— When used in this section the term 'rate' means rates, fares, and charges, and all classifications, regulations, and practices, relating thereto; the term 'carrier' means a carrier by railroad or partly by railroad and partly by water, within the continental United States, subject to this Act, excluding (a) sleeping-car companies and express companies,(b) street or suburban electric railways unless operated as part of a general steam railroad system of transportation, (c) interurban electric railways unless operated as a part of a general steam railroad system of transportation or engaged in the general transportation of freight, and (d) any belt-line railroad terminal switching railroad, or other terminal facility, owned exclusively and maintained, operated, and controlled by any State or politicay subdivision thereof; and the term 'net railway operating income' means railway operating income,

including in the computation thereof debits and credits arising from equipment rents and joint facility rents.

Paragraph 1 of section 15a added by section 422 Transportation Act 1920.

§ 405B. **Commission's Power to Initiate Rates—Fair Return.**—In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

Paragraph 2 of section 15a added by section 422 Transportation Act 1920.

§ 405C. **Percentage Constituting a Fair Return To Be Determined by Commission.**—The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: Provided, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such

aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

Paragraph 3 of section 15a added by section 422 Transportation Act 1920.

§ 405D. **Determination of Aggregate Value of Property.**—For the purpose of this sectiion, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value.

Paragraph 4 of section 15 a added by section 422 of Transportation Act 1920.

§ 405E. **Income in Excess of Fair Return a Trust Fund.**—Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such

part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States.

Paragraph 5, section 15a added by section 422 Transportation Act 1920.

§ 405F. **Disposition of Excess Over Six Per Centum.**—if, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof, shall within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described For the purposes of this paragraph the value of the railway property and the net railway operating income of a group of carriers which the Commission finds are under common control and management and are operated as a single system, shall be computed for the system as a whole irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the provisions of section 209 of this amendatory Act the provisions of this paragraph shall not be applicable to the income for any period prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4).

Paragraph 6 of section 15a added by section 422 Transportation Act 1920.

§ 405G. **Carriers Use of Reserve Fund.**—For the purpose of paying dividends or interest on its stocks, bonds or other securities, or rent for leased roads, a carrier may draw from the reserve fund established and maintained by it under the provisions of this section to the extent that its net railway operating income for any year is less than a sum equal to 6 per centum of the value of the railway property held for and used by it in the service of transportation, determined as

provided in paragraph (6); but such fund shall not be drawn upon for any purpose.

Paragraph 7 of section 15a ddded by section 422 Transportation Act 1920.

§ 405H. **Limit of Five Per Centum for Reserve Fund.**—Such reserve fund need not be accumulated and maintained by any carrier beyond a sum equal to 5 per centum of the value of its railway property determined as herein provided, and when such fund is so accumulated and maintained the portion of its excess income which the carrier is permitted to retain under paragraph (6) may be used by it for any lawful purpose.

Parapraph 8 of section 15a added by section 422, Transportation Act 1920.

§ 405I. **Rules to be Prescribed for Recovery of Excess Income.**—The Commission shall prescribe rules and regulations for the determination and recovery of the excess income payable to it under this section, and may require such security and prescribe such reasonable terms and conditions in connection therewith as it may find necessary. The Commission shall make proper adjustments to provide for the computation of excess income for a portion of a year, and for a year in which a change in the percentage consituting a fair return or in the value of a carrier's railway property becomes effective.

Paragraph 9 of section 15a added by section 422 Transportation Act 1920.

§ 405J. **Administration of This Trust Fund by Commission.**—The general railroad contingent fund so to be recoverable by and paid to the Commission and all accretions thereof shall be a revolving fund and shall be administered by the Commission. It shall be used by the Commission in furtherance of the public interest in railway transportation either by making loans to carriers to meet expenditures for capital account or to refund maturing securities originally issued for capital account, or by purchasing transportation equipment and facilities and leasing the same to carriers, as hereinafter provided. Any moneys in the fund not so employed

shall be invested in obligations of the United States or deposited in authorized depositaries of the United States subject to the rules promulgated from time to time by the Secretary of the Treasury relating to Government deposits.

Paragraph 10 of section 15a added by section 422, Transportation Act 1920.

§ 405K. **Applications by Carriers for Loan of Trust Fund.**— A carrier may at any time make application to the Commission for a loan from the general railroad contingent fund, setting forth the amount of the loan and the term for which it is desired, the purpose of the loan and the uses to which it will be applied, the present and prospective ability of the applicant to repay the loan and meet the requirements of its obligations in that regard, the character and value of the security offered, and the extent to which the public convenience and necessity will be served. The application shall be accompanied by statements showing such facts and details as the Commission may require with respect to the physical situation, ownership, capitalization, indebtedness, contract obligations, operation, and earning power of the applicant, together with such other facts relating to the propriety and expediency of granting the loan applied for and the ability of the applicant to make good the obligation, as the Commission may deem pertinent to the inquiry.

Paragraph 11, section 15a added by Section 422, Transportation Act 1920.

§ 405L. **Action by the Commission on Applications for Loans.**— If the Commission, after such hearing and investigation, with or without notice, as it may direct, finds that the making, in whole or in part, of the proposed loan from the general railroad contingent fund is necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant and the character and value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor, and to meet its other obligations in connection with such loans, the Commission may make a loan to the applicant from such

railroad contingent fund, in such amount, for such length of time, and under such terms and conditions as it may deem proper. The Commission shall also prescribe the security to be furnished, which shall be adequate to secure the loan. All such loans shall bear interest at the rate of 6 per centum per annum, payable semiannually to the Commission. Such loans when repaid, and all interest paid thereon, shall be placed in the general railroad contingent fund.

Paragraph 12, section 15a added by section 422, Transportation Act 1920.

§ 405M. **Applications by Carriers for Lease of Facilities Controlled by the Commission.**—A carrier may at any time make application to the Commission for the lease to it of transportation equipment or facilities, purchased from the general railroad contingent fund, setting forth the kind and amount of such equipment or facilities and the term for which it is desired to be leased, the uses to which it is proposed to put such equipment or facilities, the present and prospective ability of the applicant to pay the rental charges thereon and to meet the requirements of its obligations under the lease, and the extent to which the public convenience and necessity will be served. The application shall be accompanied by statements showing such facts and details as the Commission may require with respect to the physical situation, ownership, capitalization, indebtedness, contract obligations, operation, and earning power of the applicant, together with such other facts relating to the propriety and expediency of leasing such equipment or facilities to the applicant as the Commission may deem pertinent to the inquiry.

Paragraph 13 of section 15a added by section 422 Transportation Act 1920.

§ 405N. **Procedure on Application for Lease.**—If the Commission, after such hearing and investigation, with or without notice, as it may direct, finds that the leasing to the applicant of such equipment or facilities, in whole or in part, is necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant is such as to furnish reason-

able assurance of the applicant's ability to pay promptly the rental charges and meet its other obligations under such lease, the Commission may lease such equipment or facilities purchased by it from the general railroad contingent fund, to the applicant for such length of time, and under such terms and conditions as it may deem proper. The rental charges provided in every such lease shall be at least sufficient to pay a return of 6 per centum per annum, plus allowance for depreciation determined as provided in paragraph (5) of section 20 of this Act, upon the value of the equipment or facilities leased thereunder. All rental charges and other payments received by the Commission in connection with such equipment and facilities, including amounts received under any sale thereof, shall be placed in the general railroad contingent fund.

Paragraph 14 of section 15a added by section 422 Transportation Act 1920.

§ 405O. **Commission May Purchase Equipment.**—The Commission may from time to time purchase, contract for the construction, repair and replacement of, and sell, equipment and facilities, and enter into and carry out contracts and other obligations in connection therewith, to the extent that moneys included in the general railroad contingent fund are available therefor, and in so far as necessary to enable it to secure and supply equipment and facilities to carriers whose applications therefor are approved under the provisions of this section, and to maintain and dispose of such equipment and facilities.

Paragraph 15, section 15a added by section 422 Transportation Act 1920.

§ 405P. **Commission May Make Rules of Procedure.**—The Commission may from time to time prescribe such rules and regulations as it deems necessary to carry out the provisions of this section respecting the making of loans and the lease of equipment and facilities.

Paragraph 16 of section 15a added by section 422 Transportation Act 1920.

§ 405Q. **Section Not to Deprive Shippers of Right to Reparation.**—The provisions of this section shall not be construed as depriving shippers of their right to reparation in case of overcharges, unlawful excessive orr discriminatory rates, or rates exceessive in their relation to other rats, but no shipper shall be entitled to recover upon the sole ground that any partivular rate may reflect a proportion of excess income to be paid by the carrier to the Commission in the public interest under the provisions of this section.

Paragraph 17, section 15a added by section 422, Transportation Act 1920.

§ 405R. **Rights of Carriers When Untertaking New Construction.**—Any carrier, or any corporation organized to construct and operate a railroad, proposing to undertake the construction and operation of a new line of railroad may apply to the Commission for permission to retain for a period not to exceed ten years all or any part of its earing derived from such new construction in excess of the amount heretofore in this section provided, for such disposition as it may lawfully make of the same, and the Commission may in its discretion, grant such permission, conditioned, however, upon the completion of the work of construction within a period to be designated by the Commission in its order granting such permission."

Paragraph 18 of section 15a added by section 422 Transportation Act 1920.

§ 406. **Award of Damages Shall Be Made by Commission after Hearing.**—That if, after hearing on a complaint made as provided in section thirteen of this act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

First paragraph of section sixteen as it now exist is an amendment passed June 29, 1906.

The original section read:

"That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or dsiobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants, in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of said Commission shall be *prima facie* evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for

such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining, or into court to abide the ultimate decision of the court, or into the treasury;; and payment thereof may without prejudice to any other mode of recovering the same be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in *personam* in such court. When the subject in dispute shall be of the value of two thousands dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the

courts of the United States. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session."

The section as amended by the Act of March 2, 1889, is as follows:

"That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the Commission or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the cause may be; and the said court shall have power to hear and determine the matter, on such notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said Commission shall be *prima facie* evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been

violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in *personam* in such court. Where the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon, and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition

shall be filed or presented by the Commission, it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

"If the matters involved in any such order or requirement of said Commission are founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said Commission as provided in the fifteenth section of this act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the circuit court of the United States sitting as a court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience as the case may be; and said court shall by its order then fix a time and place for the trial of said cause, which shall not be less than twenty nor more than forty days from the time of said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid. At the trial the findings of fact of said Commission as set forth in its report shall be *prima facie* evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summons a jury to try the cause; but if all the parties shall waive a jury in writing, then the court shall try the issues in said cause and render its judgment thereon. If the subject in dispute shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to

security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court. If the judgment of the circuit court shall be in favor of the party complaining, he or they shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session."

In Council v. Railroad Co., 1 I. C. C. 339, 1 I. C. R. 683, the Commission declined to go into the question of a claim for damages for trespass, stating that a jury trial was necessary in such cases. See a similar holding, Heck v. East Tenn., Va. & Ga. Ry. Co., 1 I. C. C. 495, 1 I. C. R. 775; Riddle v. New York, L. E. & W. R. Co., 1 I. C. C. 594, 1 I. C. R. 787. In the case of Rawson v. Newport N. & M. V. R. Co., 3 I. C. C. 266, 2 I. C. R. 626, the Commission said that the amendment of March 2, 1889, having provided for a trial by jury in suits on the Commission's orders of reparation, such orders could under that amendment be issued. For a time even after the amendment the Commission refused to issue money orders for reparation, leaving the matter to the courts, but a circuit court having decided that the failure of the Commission to act, barred the complainant, the Commission decided that it was its duty, where the facts and law authorized it, to make awards of reparation. MacLoon v. Chicago & N. W. R. Co., 5. I. C. C. 84, 3 I. C. R. 711, 715, 716. See also Cattle Raisers' Asso. v. Chicago B. & Q. R. Co., 10 I. C. C. 83, 89, 95. Section quoted. Blume & Co. v. Wells Fargo & Co., 15 I. C. C. 53, 55. Clearly the Commission has authority to make an award of damages. Washer Grain Co. v. Mo. Pac. Ry. Co., 15 I. C. C. 147, 153. Arkansas Fuel Co. v. Chicago, M. & St. P. Ry. Co., 16 I. C. C. 95, 98. The difference between the old law and the amended act of June 29, 1906, should be kept in mind when considering the decisions relating to the section prior to that amendment. A suit on an order of the Commission is an independent suit, in which the court hears the case *de novo*, though the Commission's report is *prima facie* evidence of the matters of fact therein stated.

Kentucky & I. Bridge Co. v. L. & N. R. Co., 37 Fed. 567, 614. This is true whether the Commission itself or an individual seeks to enforce the order of the Commission. Int. Com. Com. v. Lehigh V. R. Co., 49 Fed. 177. Other evidence may overcome the prima facie effect of the Commission's report. Int. Com. Com. v. A. T. & S. F. R. Co., 50 Fed. 295, 304; Int. Com. Com. v. Cincinnati, N. O. & T. P. Ry. Co., 56 Fed. 925, 934, 935. If order not obeyed, duty of Commission to apply to a court to enforce. Int. Com. Com. v. Detroit, G. H. & M. Ry. Co., 57 Fed. 1005, 4 I. C. R. 722. Courts can only enforce or refuse to enforce orders as made. Shinkle, etc., v. L. & N. R. Co., 62 Fed. 690; Detroit, G. H. & M. R. Co. v. Int. Com. Com., 74 Fed. 803, 841, 21 C. C. A. 103. Order not enforced because Commission failed to recognize "the element of the value of the service." Int. Com. Com. v. Delaware, L. & W. R. Co., 64 Fed. 723, 724. Section cited. Int. Com. Com. v. Cincinnati, N. O. & T. P. Ry. Co., 64 Fed. 981, 984, 13 U. S. App. 700. The Commission's report is analagous to that of a referee or special master in chancery. Int. Com. Com. v. L. & N. R. Co., 73 Fed. 409, 414. The circuit court sitting as a court of equity has no jurisdiction of that part of the Commission's order relating to reparation. Int. Com. Com. v. Western N. Y. & P. R. Co., 82 Fed. 192. An order to be enforced must be definite and within the legal power of the Commission. Farmers' L. & T. Co. v. N. Pac. Ry. Co., 83 Fed. 249. If, after a hearing, the court finds the facts different from those found by the Commission, the court will act on the facts found by it. Int. Com. Com. v. East Tenn., Va. & Ga. Ry. Co., 85 Fed. 107. Act remedial and a hearing should be had, although the benefit to be derived from the order appears unappreciable. Int. Com. Com. v. Chicago, B. & Q. R. Co., 94 Fed. 272. A decree enforcing order of the Commission may be suspended pending an appeal to the Supreme Court. Int. Com. Com. v. L. & N. R. Co., 101 Fed. 146. Order not set aside unless error clearly appears. Int. Com. Com. v. L. & N. R. Co., 102 Fed. 709. When the Commission has erred in the principles of law applied, the suit to enforce should be dismissed without prejudice to the right again to apply to that body. Int. Com. Com. v. So.

Ry. Co., 105 Fed. 703, 710; L. & N. R. Co. v. Behlmer, 175 U. S. 648, 44 L. Ed. 309, 20 Sup. Ct. 209. A bill will not lie to prevent discrimination under section three prior to action by the Commission. Central Stock Yards Co. v. L. & N. R. Co., 112 Fed. 823. Affirmed on another ground. 118 Fed. 113, 55 C. C. A. 63. Affirmed on another ground. 118 Fed. 113, 55 C. C. A. 63. Affirmed by the Supreme Court, with the statement, "for the purposes of decision, we assume * * * that such rights as the plaintiff has may be enforced by bill in equity," (citing Interstate Stock Yards Co. v. Indianapolis U. R. Co., 99 Fed. 472), 192 U. S. 568, 570, 48 L. Ed. 565, 569, 24 Sup. Ct. 339. Burden on the carrier to show order erroneous. Int. Com. Com. v. L. & N. R. Co., 118 Fed. 613, 622; Int. Com. Com. v. So. Pac. Co., 123 Fed. 597, 602, 603, 604; Int. Com. Com. v. Cincinnati, H. & D. Ry. Co., 146 Fed. 559. Affirmed. Cincinnati H. & D. Ry. Co. v. Int. Com. Com. 206 U. S. 142, 51 L. Ed. 995, 27 Sup. Ct. 648. The court may adopt different grounds to arrive at the same conclusion as the Commission. Int. Com. Com. v. So. Pac. Co., 132 Fed. 829, 137 Fed. 606. Decree reversed. So. Pac. Co. v. Int. Com. Com., 200 U. S. 536, 50 L. Ed. 585, 26 Sup. Ct. 330. Courts cannot separate the legal from the illegal parts of an order of the Commission, and if any part is illegal, must refuse to enforce. Int. Com. Com. v. Lake Shore & M. S. Ry. Co., 134 Fed. 942, 947. The findings of fact of the Commission should be separated from its arguments, opinions and conclusions. Western N. Y. & P. R. Co. v. Penn. Refining Co., 137 Fed. 343, 70 C. C. A. 23. Affirmed. Penn. Refining Co. v. Western N. Y. & P. R. Co., 208 U. S. 208, 52 L. Ed. 456, 28 Sup. Ct. 268. "*Prima facie* evidence of a fact is such as, in judgment of law, is sufficient to establish the fact; and, if not rebutted, remains sufficient for the purpose." Tift v. So. Ry. Co., 138 Fed. 753, 759. Affirmed. So. Ry. Co. v. Tift, 148 Fed. 1021, 206 U. S. 428, 51 L. Ed. 1124, 27 Sup. Ct. 709. Section cited to show that Commission may sue in its own name to enforce its orders. Tex. & Pac. R. Co. v. Int. Com. Com., 162 U. S. 197, 203, 40 L. Ed. 940, 942, 16 Sup. Ct. 666. This section applies to complaints brought under the

fourth section, notwithstanding the proviso of the last named section. Int. Com. Com. v. Alabama M. R. Co., 168 U. S. 144, 169, 170, 40 L. Ed. 414, 424, 18 Sup. Ct. 45. Under section eleven of the Act of March 3, 1891 (26 Stat. L. 829, chap. 517), a supersedeas may be granted by the circuit court of appeals, when an appeal is granted on a suit brought under section sixteen of the Act to Regulate Commerce. L. & N. R. Co. v. Behlmer, 169 U. S. 644, 42 L. Ed. 889, 18 Sup. Ct. 502. Case dismissed without prejudice to right of Commission further to investigate comformably to the law announced by the court. L. & N. R. Co. v. Behlmer, 175 U. S. 648, 676, 44 L. Ed. 309, 320, 20 Sup. Ct. 209; East Tenn., Va. & Ga. Ry. Co. v. Int. Com. Com., 181 U. S. 1, 45 L. Ed. 719, 21 Sup. Ct. 516; Int. Com. Com. v. Clyde S. S. Co., 181 U. S. 29, 45 L. Ed. 729, 21 Sup. Ct. 512; Int. Com. Com. v. Chicago, B. & Q. R. Co., 186 U. S. 320, 46 L. Ed. 1182, 22 Sup. Ct. 824. The statute gives *prima facie* effect to the findings of the Commission, and when these findings are concurred in by the circuit court, they should not be interfered with unless the record discloses clear and unmistakable error. Cincinnati, H. & D. R. Co. v. Int. Com. Com., 206 U. S. 142, 154, 51 L. Ed. 995, 1000, 27 Sup. Ct. 648; Ill. Cent. R. Co. v. Int. Com. Com., 206 U. S. 441, 466, 51 L. Ed. 1128, 1138, 27 Sup. Ct. 700. The parties at interest may proceed on the order of the Commission in the circuit court. So. Ry. Co. v. Tift, 206 U. S. 428, 437, 51 L. Ed. 1124, 1127, 27 Sup. Ct. 700. "The findings of the Commission are made by law *prima facie* true. This court has ascribed to them the strength due to the judgment of a tribunal appointed by law and informed by experience." Ill. Cent. R. Co. v. Int. Com. Com., 206 U. S. 441, 454, 51 L. Ed. 1128, 1133, 1134, 27 Sup. Ct. 700.

**Notes of Decisions Rendered Since 1909.**

See notes Section 13 of act, Sec. 393, ante. Statute of Limitation. Shoecraft & Son Co. v. I. C. R. Co., 19 I. C. C. 492 Blinn Lumber Co. v. S. P. Co., 18 I. C. C. 430. After determining a rate unreasonable, improper not to award reparation. Thompson Lumber Co. v. Int. Com. Com., 193 Fed.

682, Op. Com. Ct. No. 19, p. 319. See Thompson Lumber Co. v. Ill. C. R. Co., 13 I. C. C. 657; Russe & Burgess v. Int. Com. Com., 193 Fed. 678. General statement of findings of the Commission sufficient. Lehigh Valley R. Co. v. American Hay Co., 219 Fed. 539. Ultimate facts should be stated. Meeker v. Lehigh v. R. Co., 236 U. S. 412, 59 L. Ed. 644, 35 Sup. Ct. 328.

**Notes of Decisions Rendered Since 1915.**

Sections 205 to 217 inclusive should be read in connection with this section. Plaintiff in suits on an award of damages may introduce additional evidence. Missouri P. Ry. Co. v. Ferguson Saw Mill Co., 235 Fed. 474, 149 C. C. A. 20. Hearsay testimony before Commission disregarded. A. T. & S. F. Ry. Co. v. Spiller, 246 Fed. 1, 158 C. C. A. 227. All right of recovery presumed to be included in the award made by the Commission. Louisville & N. R. Co. v. Ohio Valley Tie Co., 242 U. S. 288, 61 L. Ed. 305, 37 Sup. Ct. 120.

§ 407. **Carrier Failing to Comply With Order for Reparation, Suit May Be Brought Thereon in United States District Courts, the Order Being Prima Facie Evidence of Right to Recover.**—If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, *or in any state court of general jurisdiction having jurisdiction of the parties,* a petition setting forth briefly the causes for which he claims damages and the order of the Commission in the premises. Such suit in the circuit court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the peti-

tioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

First part of second paragraph of Sec. 16. For old Sec. 16 see next preceding section. The words italicized were added by the amendment of June 18, 1910.

Basis of reparation fixed, but the courts left to determine the amount. Independent Refiners' Asso. v. Western New York & P. R. Co., 6 I. C. C. 378, 449, 454. Reparation disallowed. Western New York & P. R. Co. v. Penn. Refining Co., 137 Fed. 343, 70 C. C. A. 23. Affirmed. Penn Refining Co. v. Western N. Y. & P. R. Co., 208 U. S. 208, 52 L. Ed. 456, 28 Sup. Ct. 268. No suit prior to an award by the Commission. Howard Supply Co. v. Chesapeake & O. Ry. Co., 162 Fed. 188, 191. Texas & Pac. Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 51 L. Ed. 553, 27 Sup. Ct. 350.

**Notes of Decisions Rendered Since 1909.**

Applies only when previous award made by the Commission, R. J. Darnell, Inc. v. Ill. C. R. Co., 190 Fed. 656; Franklin v. P. & R. Ry. Co., 203 Fed. 134. Order not *prima facie* evidence of liability, but only of the facts stated. Darnell-Taenzer Lumber Co. v. So. Pac. Co., 190 Fed. 659; reversing same styled case, 221 Fed. 890, 137 C. C. A. 460. See decision of Supreme Court. Southern Pac. Co. v. Darnell-Taenzer Lumber Co., 245 U. S. 531, 62 Fed. 451, 38 Sup. Ct. 186. See also Russe & Burgess v. Int. Com. Com., 193 Fed. 678; Thompson Lumber Co. v. Ill. C. R. Co., 193 Fed. 682, Op. Com. Ct. No. 19, p. 319. No attorneys' fees for loss of property. Mo. Pac. Ry. Co. v. Harper Bros., 201 Fed. 671, 121 C. C. A. 570. Not just a suit on the award but a plenary suit. Lehigh V. R. Co. v. Clark, 207 Fed. 717, 125 C. C. A. 235. See opinion of the Commission, Naylor & Co. v. L. V. R. Co., 15 I. C. C. 9, 18 I. C. C. 624. Not necessary to fix a new rate preliminary to an award of reparation. Baer Bros. Mercantile Co. v. D. & R. G. R. R. Co., 233 U. S. 479, 58 L. Ed. 1035, 34 Sup. Ct. 641. Reversing Denver & R. G. R. Co. v. Baer Bros. Mercantile Co., 187 Fed. 485, 109 C. C. A. 337. See Baer Bros. Mercantile Co. v. M. P. Ry. Co., 17 I. C. C. 225; Denver & R. G. Co. v. Baer Bros.

Merct. Co., 209 Fed. 577, 126 C. C. A. 399. Same styled case, 200 Fed. 614. Order fixing unreasonableness of rates in favor of one party may be sued on by others. National Pole Co. v. Chicago & Mo. Ry. Co., 211 Fed. 65. Suit may be brought where beneficiary resides. St. L. & S. W. Ry. Co. v. Samuels Co., 211 Fed. 588. The evidential value of an order of the Commission is for the determination of the court and jury. Lehigh Valley R. Co. v. Meeker, 211 Fed. 785. Interest and attorneys' fees allowed, 209 Fed. 577, *supra*. No attorneys' fees can be allowed where recovery is under a state law for failure to furnish cars. A. T. & S. F. Ry. Co. v. Vosberg, 238 U. S. 56, 59 L. Ed. 1199, 35 Sup. Ct. 675. See annotations Secs. 382 and 383, *supra*.

**Notes of Decisions Rendered Since 1915.**

Suits may be filed in court originally when only the application of a rate is involved. Hillsdale Coal & Coke Co. v. P. R. Co., 237 Fed. 272; Morrisdale Coal Co. v. Penn. R. Co., 230 U. S. 304, 57 L. Ed. 1494, 33 Sup. Ct. Rep. 938; Penn. R. Co. v. Purital Coal Mining Co., 237 U. S. 121, 59 L. Ed. 867, 35 Sup. Ct. Rep. 484. Error of the Commission in applying a wrong principle destroys its award. Penn. R. Co. v. Jacoby & Co., 242 U. S. 89, 61 L. Ed. 165, 37 Sup. Ct. 49.

§ 408. **Limitation on Actions for Damages.**—All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, unless the carrier, after the expiration of such two years or within ninety days before such expiration, begins an action for recovery of charges in respect of the same service, in which case such period of two years shall be extended to and including ninety days from the time such action by the carrier is begun. In either case the cause of action in respect of a shipment of property shall, for the purpose of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after. A petition for the enforcement of an order

for the payment of money shall be filed in the district court or State court within one year from the date of the order, and not after.

Paragraph 3 of section 16 as amended by setcion 424 Transportation Act 1920. The former section read: All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court or state court within one year from the date of the order, and not after.

Last part of second paragraph of Sec. 16, amended by the Act of June 18, 1910 by adding the words "or state court."

Prior to this amendment no limitation was prescribed by the Act, and the Commission held that the law of the state in which was located the circuit court in which suit was brought on the order of reparation would control as to limitation. Cattle Raisers' Asso. v. C. B. & Q. R. Co., 10 I. C. C. 83. 100, 101, 102, 103, 104. Question as to limitation raised, but not decided. Oshkosh Logging Tool Co. v. Chicago & N. W. Ry. Co., 14 I. C. C. 109, 113. The limitation period of one year begins to run August 28, 1906, and claims arising prior to that date, which is the effective date of the amended Act, though accrued more than two years prior thereto, may be presented prior to midnight of August 28, 1907. Nicola, Stone & Myers Co. v. L. & N. R. Co., 14 I. C. C. 199, 206. A written presentation of a claim without formal complaint stops limitation. Venus v. St. Louis, I. M. & S. Ry. Co., 15 I. C. C. 136. The cause of action accrues when the carrier violates the Act. Re When a cause of Action Accrues, 15 I. C. C. 201. Or when freight charges are paid. Kile & Morgan Co. v. Deepwater Ry. Co., 15 I. C. C. 235. This statute does not apply to suits brought primarily in a Federal Court. Lyne v. Delaware, L. & W. R. Co., 170 Fed. 847.

**Notes of Decisions Rendered Since 1909.**

Ruling on Blinn Lumber Co. v. S. P. Co., 18 I. C. C. 430; Standard Oil Co. v. C. T. & R. R. Co., 21 I. C. C. 460, 461; Shoecraft & Son Co. v. I. C. R. Co., 19 I. C. C. 492. Informal

complaint stops the running of the statute. Memphis Freight Bureau v. St. L. S. W. Ry. Co., 18 I. C. C. 67; Riverside Mills v. Ga. R. R. Co., 20 I. C. C. 423, 424. Liability of carrier several. Sondheimer v. I. C. R. R. Co., 20 I. C. C. 606, 610, citing Independent Refiners' Ass'n v. W. N. Y. & P. R. R. Co., 6 I. C. C. 378. What is a sufficient statement of the claim to stop the running of the statute. Fels & Co. v. P. R. R. Co., 23 I. C. C. 483, 488. Complaint dismissed, action barred. Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 547; Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 266. The question goes to the jurisdiction which is lost after the statute has run. Michigan Hardwood Mfgrs. Ass'n v. Freight Bureau, 27 I. C. C. 32. Filing complaint by an association does not stop the running of the statute save in favor of those named in the complaint. Commerical Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 307. Receipt of a claim is filing. Marion Coal Co. v. D. L. & W. R. C. Co., 27 I. C. C. 441, 442. Better practice to file claim for reparation in the original complaint. Alleged Unreasonable Rates on Meat, 28 I. C. C. 332, 335. Intent of the statute discussed. Lehigh V. R. Co. v. Meeker, 211 Fed. 785, 802, 128 C. C. A. 311; Meeker v. Lehigh V. R. Co., 236 U. S. 412, 59 L. Ed. 644, 35 Sup. Ct. 328; Penn. R. Co. v. Jacoby, 239 U. S. 631, 60 L. Ed. 476, 36 Sup. Ct. 166, affirming by divided courts, Jacoby v. Penn. R. Co., 19 I. C. C. 392.

**Notes of Decisions Rendered Since 1915.**

Under the former statute the cause of action accrued when the unlawful charge was paid. United States, ex rel. Louisville Cement Co. v. Int. Com. Com., 246 U. S. 638, 62 L. Ed. 914, 38 Sup. Ct. 408. This is the logical rule consistent with legal principles and the rule should not have been changed.

§ 409. **All Parties Jointly Awarded Damages May Sue as Plaintiff against All Carriers Parties to the Award.**—In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such

joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

Fourth paragraph of section sixteen.

§ 410. **Service of Orders of Commission.**—Every order of the Commission shall be forthwith served upon the designated agent of the carrier in the city of Washington or in such other manner as may be provided by law.

Fifth paragraph of Sec. 16 as amended by Act June 18, 1910. The former section read:

Every order of the Commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be *prima facie* evidence of the receipt of such order by the carrier in due course of mail.

§ 411. **Commission May Suspend or Modify Its Orders.—The** Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

Sixth paragraph of section sixteen.

Power exercised. Traffic Bureau Merchants Ex. of St. Louis v. Chicago, B. & Q. R. Co., 14 I. C. C. 551.

§ 412. **Punishment for Knowingly Disobeying an Order Issued under Section Fifteen.**—It shall be the duty of every common carrier, its agents, and employees, to observe and comply with such orders so long as the same shall remain in effect. Paragraph 7 of section 16.

Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of sections 3, 13, or 15 of this Act shall forfeit to the United States the sum of $5,000 for each offense. Every distinct violation shall be a separate offense,

and in case of a continuing violation each day shall be deemed a separate offense.

Paragraph 8 of this section is as amended by section 426 of Transportation Act 1920.

The forfeiture provided for in this act shall be payable into the treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Paragraphs seven, eight and nine of section sixteen.

Old paragraph 8 formerly paragraph 7 read: Any carrier, any officer, representative, or agent of a carrier or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this act shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

§ 413. **Special Attorneys May Be Employed.**—The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case pending in the Commerce Court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

Paragraph eleven of Sec. 16 as amended by the Acts of June 18, 1910, and Transportation Act 1920, section 428. The only changes made in 1920 was to change "causes" to

"cases" and before the word "represent" to change "and" to "or." The section prior to 1910 read:

It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. The Commision may, with the consent of the Attorney-General, employ special counsel in any proceeding under this act, paying the expenses of such employment out of its own appropriation.

Paragraph nine of original section sixteen.

§ 414. **Courts May Enforce Obedience to Commission's Orders, Mandatory or Otherwise.**—If any carrier fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney General, may apply to the Commerce court for the enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

Paragraph twelve of Sec. 16 being amendment of June 18, 1910. The commerce court having been abolished, application must not be made to the district court. Sec. 461 *post*. The section prior to the amendment read:

If any carrier fails or neglects to obey any order of the Commission, other than for the payment of money, while the same is in effect, any party injured thereby, or the Commission in its own name, may apply to the circuit court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order. Such application shall be by petition, which shall state the substance of the

order and the respect in which the carrier has failed of obedience, and shall be served upon the carrier in such manner as the court may direct, and the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If, upon such hearing as the court may determine to be necessary, it appears that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction, or other proper process, mandatory or otherwise to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it, or them, obedience to the same; and in the enforcement of such process the court shall have those powers ordinarily exercised by it in compelling obedience to its writs of injunction and mandamus.

Tenth paragraph of original section sixteen.

§ 415. **Schedules, Contracts, etc., Must Be Filed with the Commission, and, When Filed, Original or Certified Copy Prima Facie Evidence.**—The copies of schedules *and classifications* and tariffs of rates, and fares, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual *or other* reports of carriers made to the Commission as required under the provisions of this act shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as *prima facie* evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, *classifications*, tariffs, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the secretary, under the Commission's seal, shall be received in evidence with like effect as the originals.

Paragrph 13 of Sec. 16 as amended by the Act of June 18, 1910, the words italicized being added by the amendment.

Schedules as evidence. New York C. & H. R. Co. v. Beaham, 242 U. S. 148, 61 L. Ed. 210, 37 Sup. Ct. 43.

§ 416. **Rehearings May be Granted by Commission.**—That after a decision, order or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

Section 16-a added by the Act of June 29, 1906.

The Commission exercised the right to grant rehearings prior to this amendment. Rehearing not granted unless Commission is satisfied result would be changed. Riddle v. Pittsburg & L. E. R. Co., 1 I. C. C. 490, 1 I. C. R. 773. After hearing complaint on pleadings and proof, a rehearing will not be granted to one not a party to the proceedings. Re Petition of Produce Exchange, 2 I. C. C. 588, 2 I. C. R. 412. Application should be verified and should state the nature of the new testimony. Commission may of its own motion grant a rehearing when general public interest is involved. Rice v. Western N. Y. & P. R. Co., 2 I. C. C. 389, 2 I. C. R. 298. Will not reopen just to rediscuss the facts and law already before the Commission. Myers v. Penn. Co., 2 I. C. C. 573, 2 I. C. R. 403, 544. Upon rehearing with additional

evidence former order set aside. Bates v. Penn. R. Co., 4 I. C. C. 281, 3 I. C. R. 296. Petition must be supported by proof showing *prima facie error*. Proctor & Gamble v. Cincinnati, H. & D. R. Co., 4 I. C. C. 443, 3 I. C. R. 374. A form of petition. Haddock v. Delaware, L. & W. R. Co., 3 I. C. R. 410. Application denied. Railroad Com. of Fla. v. Savannah, F. & W. Ry. Co., 5 I. C. C. 136, 3 I. C. R. 750; Delaware State Grange v. New York P. & N. R. Co., 5 I. C. C. 161, 3 I. C.R. 828; Brady v. Penn. R. Co., 4 I. C. R. 283; Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co., 10 I. C. C. 83, 106, 12 I. C. C. 507, 514; Johnston-Larimer Dry Goods Co. v. A. T. & S. F. Ry. Co., 12 I. C. C. 188; Poor v. Chicago, B. & Q. R. Co., 12 I. C. C. 469; Muscogee Commercial Club v. Mo., Kan. & Tex. Ry. Co., 13 I. C. C. 68; Hussey v. Chicago, R. I. & P. Ry. Co., 14 I. C. C. 215; Randolph Lumber Co. v. Seaboard A. L. Ry. Co., 14 I. C. C. 338. Granted to correct the record. Independent Refiners' Asso. v. Penn. R. Co., 4 I. C. R. 369. Not granted when sought to secure reparation upon questions not considered in original case. Rice v. Western N. Y. & P. R. Co., 6. I. C. C. 455. Rehearing granted. Page v. Delaware, I. & W. R. Co., 6 I. C. C. 548. Re Matters of Allowance to Elevators, 12 I. C. C. 85, 13 I. C. C. 498, 14 I. C. C. R. 315, 320; Thompson Lumber Co. v. Ill. Cent. R. Co., 14 I. C. C. 566. Rehearing had, but, after hearing, dismissed or denied. Cattle Raisers' Asso. v. Ft. Worth & D. C. Ry. Co., 7 I. C. C. 555-a; City of Danville v. So. Ry. Co., 8 I. C. C. 571. Rehearing granted that the Commission might exercise the power granted it under Act June 29, 1906. Cattle raisers' Asso. v. Mo. Kan. & Tex. Ry. Co., 12 I. C. C. 1; Banner Milling Co. v. New York C. & H. R. R. Co., 14 I. C. C. 398, but not so when complainant neglected to enforce in the courts a former order. Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co., 12 I. C. C. 6. Power to grant discretionary. City of Atchison v. Mo. Pac. Ry. Co., 12 I. C. C. 254.

No time limit is prescribed. Stonega Coke & Coal Co. v. L. & N. R. Co., 39 I. C. C. 523, 535. The Commission has, it is believed, without legal authority, assumed to fix a limitation of sixty days in cases relating to reparation. Rules of Practice XV paragraph (e). Section 282, *ante*.

§ 417. **Procedure before the Commission.**—The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. The Commission shall have an official seal, which shall be judicially noticed. Any member of the Commission may administer oaths and affirmations and sign subpœnas. A majority of the commission shall constitute a quorum for the transaction of business, except as may be otherwise herein provided, but no commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. The Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, or before any division of the Commission, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before the Commission or any division thereof and be heard in person or by attorney. Every vote and official act of the Commission, or of any division thereof, shall be entered of record, and its proceedings shall be public upon the request of any party interested.

Section 17, as amended by the Act of August 9, 1917, 40 Stat. Large 270, Chap. 50, section 2, being paragraph 1 of section 17 as amended by Transportation Act 1920, section 430. The former section read:

That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record and its proceedings shall be public upon the request of either party interested.

Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpœnas.

Original section seventeen, except the words "and sign subpœnas" added at the end by Act March 2, 1889.

Under authority of this section, the Commission has formulated rules of procedure, *ante*. Sections 268-291.

§ 417A. **Division of the Commission.**—The Commission is hereby authorized by its order to divide the members thereof into as many divisions (each to consist of not less than three members) as it may deem necessary, which may be changed from time to time. Such divisions shall be denominated, respectively, division one, division two, and so forth. Any Commissioner may be assigned to and may serve upon such division or divisions as the Commission may direct, and the senior in service of the Commissioners constituting any of said divisions shall act as chairman thereof. In case of vacancy in any division, or of absence or inability to serve thereon of any Commissioner thereto assigned, the chairman of the Commission or any Commissioner designated by him for that purpose, may temporarily serve on said division until the Commission shall otherwise order.

Paragraph 2 of section 17 as amended by Transportation Act 1920, section 431.

§ 417B. **Function of Commission May Be Performed by Divisions.**—The Commission may by order direct than any of its work, business, or functions arising under this Act, or under any Act amendatory thereof, or supplemental thereto, or under any amendment which may be made to any of said Acts, or under any Act or joint resolution which has been or may hereafter be approved, or in respect of any matter which has been or may be referred to the Commission by Congress or by either branch thereof, be assigned or referred to any of said divisions for action thereon, and may by order at any time amend, modify, supplement, or rescind any such direction. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Commission.

Paragraph 3 of section 17 as enacted by Act of August 9, 1917, U. S. Comp. Stat. Supp. 1919, Vol. 2, Section 8586.

§ 417C. **Procedure of Division—Rehearing by Whole Commission.**—In conformity with and subject to the order or orders of the Commission in the premises, each division so constituted shall have power and authority by a majority thereof to hear and determine, order, certify, report, or otherwse act as to any of said work, business, or functions so assigned or referred to it for action by the Commission, and in respect thereof the division shall have all the jurisdiction and powers now or then conferred by law upon the Commission, and be subject to the same duties and obligations. Any order, decision, or report made or other action taken by any of said divisions in respect of any matters so assigned or referred to it shall have the same force and effect, and may be made, evidenced, and enforced in the same manner as if made, or taken by the Commission, subject to rehearing by the Commission as provided in section sixteen-a hereof for rehearing cases decided by the Commission. The secretary and seal of the Commission shall be the secretary and seal of each division thereof.

Paragraph 4 of section 17 as enacted by Act of August 9, 1917, United States Comp. Stat. Supp. 1919, Sec. 8586. Paragraphs 5 and 6 of the Act of August 9, 1917 were repealed by Transportation Act 1920, Section 432.

§ 417D. **Powers of Commission Not Lessened.**—Nothing in this section contained, or done pursuant thereto, shall be deemed to divest the Commission of any of its powers.

Paragraph 5 of section 17 as numbered by section 432 Transportation Act 1920, paragraph 7 of Act of August 9, 1917.

§ 418. **Salaries and Expenses of the Commission.**—That each commissioner shall receive an annual salary of twelve thousand dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of seventy-five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its

use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

Section eighteen, paragraph 1 and 2, as amended by Act of March 2, 1889.

The original Act made the employmest and salaries of employees subject to the approval of the Secretary of the Interior, and directed that cabinet officer to furnish the Commission with suitable offices. The section as it now is, is the amendment of March 2, 1889, changing the original Act in the above two particulars. The salary up to June 29, 1906, was seven thousand five hundred dollars. The present salary is made to conform to section twenty-four of the present Act. Cited, Moseley v. United States, 35 Ct. Claims, 355; United States v. Moseley, 187 U. S. 322, 47 L. Ed. 198, 23 Sup. Ct. 90.

The salary of the secretary was formerly $3500.00, which is the amount stated in the Act of 1889.

The Transportation Act 1920 makes the salary of the Commissioners and Secretary as stated. Sectios 446, *post*.

§ 419. **Principal Office of Commission in Washington, but May Prosecute Inquiries Elsewhere.**—The principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or the parties may be promoted, or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this act.

Section nineteen as originally enacted.

The Commission, or some of its members, frequently hold sessions out of Washington for the purpose of taking evidence in complaints filed with it. But from press of business hearings away from Washington are usually conducted by Examiner Attorneys or Special Examiners.

§ 420. **The Commission Is Authorized to Investigate, Ascertain and Report the Value of Railroad Property.**—That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this act. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be necessary. The Commission may appoint examiners who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall make an inventory which shall list the property of every common carrier subject to the provisions of this act in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

First. In such investigation said Commission shall ascertain and report in detail as to each piece of property owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value, and each of the foregoing cost values.

Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same,

and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value.

Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

Fourth. In ascertaining the original cost to date of the property of such common carrier the Commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corporation operating such property; upon any increases or decreases of stocks, bonds, or other securities, in any reorganization; upon moneys received by any such corporation by reason of any issues of stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the Commission upon the expenditure of all moneys and the purposes for which the same were expended.

Fifth. The Commission shall ascertain and report the amount and value of any aid, gift, grant of right of way, or donation, made to any such common carrier, or to any previous corporation operating such property, by the Government of the United States or by any State, county, or municipal government, or by individuals, associations, or corporations; and it shall also ascertain and report the grants of land to any such common carrier, or any previous corporation operating such property, by the Government of the United States, or by any State, county, or municipal government, and the amount of money derived from the sale of any portion of such grants and the value of the unsold portion thereof at the time acquired and at the present time, also, the amount and value of any concession and allowance made by such common carrier to the Government of the United States, or to any State, county, or municipal government in consideration of such aid, gift, grant, or donation.

§ 421. **Method of Procedure to Be Prescribed by the Commission.**—Except as herein otherwise provided, the Commission shall have power to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted and the classification of the elements that constitute the ascertained value, and such investigation shall show the value of the property of every common carrier as a whole and separately the value of its property in each of the several States and Territories and the District of Columbia, classified and in detail as herein required.

§ 422. **How Such Investigation Prosecuted.**—Such investigation shall be commenced within sixty days after the approval of this act and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session thereafter until completed.

§ 423. **Duty of Carriers to Aid the Investigation.**—Every common carrier subject to the provisions of this act shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the Commission free access to its right of way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is hereby directed and required to cooperate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and secton twenty of this act shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.

§ 424. **Valuations to Be Revised and Corrected.**—Upon the completion of the valuation herein provided for, the Commission shall thereafter in like manner keep itself informed of all extensions and improvements or other changes in the condition and value of the property of all common carriers, and shall ascertain the value thereof, and shall from time to time, revise and correct its valuations, showing such revision and correction classified and as a whole and separately in each of the several States and Territories and the District of Columbia, which valuations, both original and corrected, shall be tentative valuations and shall be reported to Congress at the beginning of each regular session.

§ 425. **Carrier to Make Reports.**—To enable the Commission to make such changes and corrections in its valuations of each class of property, every common carrier subject to the provisions of this Act shall make such reports and furnish such information as the Commission may require.

§ 426. **Notice of Completion of Valuation.**—Whenever the Commission shall have completed the tentative valuation of the property of any common carrier as herein directed, and before such valuation shall become final, the Commission shall give notice by registered letter to the said carrier, the Attorney General of the United States, the governor of any state in which the property so valued is located, and to such additional parties as the Commission may prescribe, stating the valuation placed upon the several classes of property of said carrier, and shall allow thirty days in which to file a protest of the same with the Commission. If no protest is filed within thirty days, said valuation shall become final as of the date thereof.

§ 427. **Hearings before Valuation Fixed.**—If notice of pro*facie* evidence of the value of the property in all proveedings same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If, after hearing any protest of such tentative valuation under the provisions of this act, the Commission shall be of the opinion that its valuation should not become final, it

shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the Commission and the classification thereof shall be published and shall be *prima facie* evidence of the value of the property in all proceedings under the act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the act approved February fourth, eighteen hundred and eighty-seven, commonly known as "the act to regulate commerce," and the various acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

§ 428. **Effect of Valuation as Evidence.**—If upon the trial of any action involving a final value fixed by the Commission, evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the Commission, or additional thereto and substantially affecting said value, the court, before proceeding to render judgment shall transmit a copy of such evidence to the Commission, and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence the Commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend or rescind any order which it has made involving said final value, and shall report its action thereon to said court within the time fixed by the court. If the Commission shall alter, modify, or amend its order, such altered, modified or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the Commission in the first instance. If the original order shall not be rescinded or changed by the Commission, judgment shall be rendered upon such original order.

§ 429. **Applicable to Receivers—Penalty.**—The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with all the require-

ments of this section and in the manner prescribed by the Commission such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in section sixteen of the act to regulate commerce.

§ 430. **Jurisdiction of Courts to Aid.**—That the district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this section by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of this section.

Sections 420 to 430 *supra* inclusive constitute Sec. 19-a of the Act to Regulate Commerce. Section 19-a being added by the Amendment of March 1, 1913.

Transportation Act 1920, section 433 provides that section 19-a of Interstate Commerce Act should be divided into paragraphs designated as a to l.

The rulings of the Commission so far, are published in I. C. C. Val Rep. 1. The Supreme Court decided that the principles adopted by the Commission were erroneous. United States v. Int. Com. Com., 251 U. S. —, 64 L. Ed. —, 40 Sup. Ct. —.

§ 431. **Requirements as to Transportation of Employees of the Commission with Supplies Therefor.**—It shall be the duty of every common carrier by railroad whose property is being valued under the act of March first, nineteen hundred and thirteen, to transport the engineers, field parties and other employees of the United States who are actually engaged in making surveys and other examination of the physical property of said carier necessary to execute said act from point to point on said railroad as may be reasonably required by them in the actual discharge of their duties; and also, to move from point to point and store at such points as may be reasonably required the cars of the United States which are being used to house and maintain said employees; and

also, to carry the supplies necessary to maintain said employees and the other property of the United States actually used on said railroad in said work of valuation. The service above required shall be regarded as a special service and shall be rendered under such forms and regulations and for such reasonable compensation as may be prescribed by the Interstate Commerce Commission and as will insure an accurate record and account of the service rendered by the railroad, and such evidence of transportation, bills of lading, and so forth, shall be furnished to the Commission as may from time to time be required by the Commission.

Amendment of Aug. 1, 1914 to act March 1, 1913,

Section 8591a United States Compiled Statutes, 38 Stat. 627.

§ 432. **Annual Reports Required and What They Shall Contain. Penalties for Failure to Make.**—That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, and from the owners of all railroads engaged in interstate commerce as defined in this act, to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; [the accidents to passengers, employees, and other persons, and the causes thereof]; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operation of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates

or regulations concerning fares or freight agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, *or on the thirty-first day of December in each year if the Commission by order substitute that period for the year ending June thirtieth,* and shall be made out under oath and filed with the Commission at its office in Washington *within three months after the close of the year for which the report is made,* [on or before the thirtieth day of September then next following], unless additional time be granted in any case by the Commission; and if any carrier, person, or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for making and filing the same or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, *and to file periodical* or special, *or both periodical and special, reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the Commission so requires;* and if asy such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures last above provided.

Said forfeiture shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this Act.

The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

Paragraph 1 to 4 of Section 20 as amended by Act June 18, 1910. The words added by the amendment are italicized. The Act June 29, 1906 required an annual report to be made "not later than the 30th day of September." The words enclosed in brackets in this Section were in the Act of 1906 but repealed by Act 1910.

The original law read:

"That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid. the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises and equipment; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freight, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts), a period of time within which

all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept."

The Commission formerly required an apportionment of expenses between freight and passenger business, this being found to be arbitrary and valueless was discontinued. Consolidated Forwarding Co. v. So. Ry. Co., 10 I. C. C. 590, 600. The old law did not apply to a carrier doing purely intrastate business. Int. Com. Com. v. Bellaire, Z. & C. Ry. Co., 77 Fed. 942; United States v. Chicago, K & S. R. Co., 81 Fed. 783. But does apply when the state carrier joins in a through rate of charges. United States ex. rel. Int. Com. Com. v. Seaboard Ry. Co., 82 Fed. 563, but mandamus should not issue to compel a report by an officer who has resigned. Same case, 85 Fed. 955. Act applies when state carrier engages in transporting interstate commerce, even though not on a through bill of lading and charging its full local charges. United States v. Colorado & N. W. R. Co., 157 Fed. 321, 342, 85 C. C. A. 27. Language from this section quoted as showing the scope of the Commission's power to make investigations. Int. Com. Com. v. Harriman, 157 Fed. 432, 438. Reversed. Harriman v. Int. Com. Com., 211 U. S. 407, 53 L. Ed. 253, 29 Sup. Ct. 115. Federal courts prior to June 29, 1906, had no jurisdiction by original proceeding in mandamus to compel filing of reports. United States v. Lake S. & M. S. Ry. Co., 197 U. S. 536, 49 L. Ed. 870, 25 Sup. Ct. 538. States may require reports not inconsistent with act of Congress. People v. Chicago, I. & L. Ry. Co., 223 Ill. 581, 79 N. E. 144.

**Notes of Decisions Rendered Since 1909.**

Regulations prescribed relating to separation of operating expenses. Re Separation of Operating Expenses, 30 I. C. C. 676. Power of the Commission stated as to hours of service of employees. B. & O. R. Co. v. Int. Com. Com., 221 U. S. 612, 55 L. Ed. 878, 31 Sup. Ct. 621. As to Water Carriers. Int. Com. Com. v. Goodrich Transit Co., 224 U. S. 194, 56 L. Ed. 729, 32 Sup. Ct. 436; The statute held valid and the powers of the Commission discussed. Kansas City So. Ry. Co. v. United States, 231 U. S. 423, 58 L. Ed. 296, 34 Sup. Ct.

125. Affirming, same styled case, 204 Fed. 641, Opin. Com. Ct. No. 56, p. 641.

**Notes of Decisions Rendered Since 1915.**

An honest mistake will not subject a carrier to the penalty. United States v. N. P. Ry. Co., 242 U. S. 190, 61 L. Ed. 240, 37 Sup. Ct. 22. Section discussed. Smith v. Int. Com. Com., 245 U. S. 33, 62 L. Ed. 135, 37 Sup. Ct. 30.

§ 433. **Commission May Prescribe Form of Keeping Accounts and Inspect Same.**—The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. The Commission shall, as soon as practicable, prescribe, for carriers subject to this Act, the classes of property for which depreciation charges may properly be included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. The carrier subject to this Act shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charges or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses. The Commission shall at all times have access to all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by carriers subject to this Act, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto, and it shall be unlawful for such carriers to keep any other accounts, records, or

memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers. This provision shall apply to receivers of carriers and operating trustees. The provisions of this section shall also apply to all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, kept during the period of Federal control, and placed by the President in the custody of carriers subject to this Act."

Paragraph 5 of section 20 as amended by section 435 of Transportation Act 1920. The former section read:

The Commission may, in its discretion, prescribe the forms of any and all accounts records, and memoranda to be kept by carriers subject to the provisions of this act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

Fifth paragraph of section twenty as amended by Act of June 29, 1906.

In compliance with and under the authority of this section, the Commission has prescribed an elaborate and uniform system of accounting for carriers subject to the Act.

**Notes of Decisions Rendered Since 1909.**

Records of the transit house are subject to the provision of the Section. Transit case, 24 I. C. C. 340, 351. See Re Separa-

tion of Operating Expenses, 30 I. C. C. 676, and Rules Governing the Separation of Operating Expenses between Freight and Passenger Service issued by the Commission, effective July 1, 1915.

§ 434. **Penalities for Failure to Keep Accounts and for Falsifying the Record.**—In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, or memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and very day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this act.

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device, falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment.

Sixth and part of seventh paragraph of section twenty as amended by Act June 29, 1906.

§ 435. **The Commission May Permit the Destruction of Papers.**—That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers

memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers. This provision shall apply to receivers of carriers and operating trustees. The provisions of this section shall also apply to all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, kept during the period of Federal control, and placed by the President in the custody of carriers subject to this Act."

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The Commission may, in its discretion, prescribe the forms of any and all accounts records, and memoranda to be kept by carriers subject to the provisions of this act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

Fifth paragraph of section twenty as amended by Act of June 29, 1906.

In compliance with and under the authority of this section, the Commission has prescribed an elaborate and uniform system of accounting for carriers subject to the Act.

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§ 434. **Penalities for Failure to Keep Accounts and for Falsifying the Record.**—In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, or memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and very day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this act.

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device, falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment.

Sixth and part of seventh paragraph of section twenty as amended by Act June 29, 1906.

§ 435. **The Commission May Permit the Destruction of Papers.**—That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers

which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

Last part of paragraph 7 of section 20 as amended by Act of June 29, 1906.

§ 436. **Penalty for an Examiner Divulging Information Received as Such.**—Any examiner who divulges any fact or information which may come into his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

Eighth paragraph of section twenty as amended by Act June 29, 1906.

§ 437. **United States Circuit and District Courts May, upon Application of Attorney-General at Request of Commission, Enforce Provisions of Act.**—That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said act to regulate commerce or of any act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said acts, or any of them.

Ninth paragraph of section twenty as amended by Act June 29, 1906.

The authority with reference to reports of the carriers did not exist prior to the Hepburn Act. United States v. Lake S. & M. S. Ry. Co., 197 U. S. 536, 49 L. Ed. 870, 25 Sup. Ct. 538.

Circuit courts having been abolished, district courts have jurisdiction.

**Notes of Decisions Rendered Since 1909.**

"Does not confer on the court power to compel by mandamus, in aid of an investigation by the Interstate Commerce

Commission pursuant to a resolution of the Senate requiring the investigation, a railroad to disclose amount of stock and bonds of another railroad company it owns or controls, and whether the two railroads serve the same territory in whole or in part, and whether, under separate ownership, they will be competitors, and other facts showing further relations between the two railroads and showing whether such relations restrict competition and maintain fixed rates; since the investigation does not relate to interstate commerce as regulated by the Interstate Commerce Act, but relates perhaps to other legislation, such as the anti-trust act," nor does the section authorize courts to compel a disclosure of privileged communication. United States v. L. & N. R. Co., 212 Fed. 486. Case affirmed. United States v. L. & N. R. Co., 236 U. S. 318, 59 L. Ed. 598, 35 Sup. Ct. 363.

§ 438. **Commission May Employ Agents or Examiners.**—And to carry out and give effect to the provisions of said acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

Tenth paragraph of section twenty as amended by Act June 29, 1906.

§ 439. **Receiving Carrier Liable for Loss, Remedy Cumulative.**—That any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common car-

rier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void.

Part of paragraph 11 section 20 known as Carmack Amendment and subsequently twice amended by what are designated as the Cummins Amendments.

§ 440. **Carrier Liable for Full Value of Property Transported—Continued.**—"Provided, that if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by and under the laws and regulations applicable to transportation by water, and the liability of the initial carrier shall be the same as that of such carrier by water."

Provided, however, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first to bag-

gage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section ten of this Act to regulate commerce, as amended; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the Commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary live stock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes or other special uses; Provided, further, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law.

"Provided further, That it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days, for the filing of claims than four months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice."

Provided, however, That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negli-

gence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery.

That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury, as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

No suit brought in any State court of competent jurisdiction against a railroad company, or other corporation, or person, engaged in and carrying on the business of a common carrier, to recover damages for delay, loss of, or injury to property received for transportation by such common carrier under section twenty of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended June twenty-ninth, nineteen hundred and six, April thirteenth, nineteen hundred and eight, February twenty-fifth, nineteen hundred and nine, and June eighteenth, nineteen hundred and ten shall be removed to any court of the United States where the matter in controversy does not exceed, exclusive of interest and costs, the sum or value of $3,000.

Sections 439 and 440 include the Carmack and two Cummins amendments as amended by sections 437 and 438 of Transportation Act 1920. The first proviso in section 440 was added by 1920 Act. The last proviso is a substitute for one reading: Provided, further, that it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years. The former law was fully and ably discussed and authorities cited in Re Released Rates, 13 I. C. C. 550, et seq. Provision constitutional. Smeltzer v. St. L. & S. F. R. Co., 158 Fed. 649; Riverside Mills v. Atlantic C. L. R. Co., 168 Fed. 987, 990. A bill of lading limiting liability to fifty dollars void. Greenwall v. Weir, 111 N. Y. Sup. 235, 59 Misc. Rep. 431; Schutte v. Weir, 111 N. Y. Sup. 240, 59 Miss. Rep.

438; Silverman v. Weir, 114 N. Y. Sup. 6. Section valid. So. Pac. Co. v. Crenshaw Bros., 5 Ga. App. 675, 65 S. E. 865; Galveston, H. & S. A. Ry. Co. v. Crow, 117 S.W. 170.

**Notes of Decisions Rendered Since 1909.**

The carrier not permitted to avoid this liability. Coal Rates on Stony Fork Branch, 26 I. C. C. 168, 174; Adams Exp. Co. v. Croninger, 226 U. S. 491, 57 L. Ed. 314, 33 Sup. Ct. 148, 44 L. R. A. (N. S.) 257; Chicago, St. P. M. & O. R. Co. v. Latta, 266 U. S. 519, 57 L. Ed. 328, 33 Sup. Ct. 155, reversing judgments, Latta v. Chicago, St. P., M. & O. Ry. Co., 172 F. 80, 97 C. C. A. 198, and Chicago, St. P., M. & O. Ry. Co. v. Latta, 184 Fed. 987, 106 C. C. A. 664. See also holding that there may be a limitation of the amount that may be recovered for loss. See also Wells-Fargo Co. v. Neiman-Marcus Co., 227 U. S. 469, 57 L. Ed. 600, 33 Sup. Ct. 267; M. K. & T. R. Co. v. Harriman, 227 U. S. 657, 57 L. Ed. 690, 33 Sup. Ct. 397; reversing Harriman Bros. v. M. K. & T. R. R. Co., — Tex. Civ. App. — 128 S. W. 932; Kansas C. S. R. Co. v. Carl, 227 U. S. 639, 57 L. Ed. 683, 33 Sup. Ct. 227, reversing Carl v. Kansas C. S. R. Co., 91 Ark. 97, 121 S. W. 932, 134 Am. St. Rep. 56. This limitation being stated in a tariff sufficient. B. & M. R. Co. v. Hooker, 233 U. S. 97, 58 L. Ed. 901, 34 Sup. Ct. 526, reversing Hooker v. B. & M. R. Co., 209 Mass. 598, 95 N. E. 945, Ann. Cas. 1912B, 669. Validity of statute discussed. N. C. & St. L. R. Co. v. Burnside Mills, 219 U. S. 186, 55 L. Ed. 167, 31 Sup. Ct. 164, 31 L. R. A. (N. S.), 7; Louisville & N. R. Co. v. Scott, 219 U. S. 209, 55 L. Ed. 183, 31 Sup. Ct. 171; Galveston, H. & S. A. R. Co. v. Wallace, 223 U. S. 481, 56 L. Ed. 516, 32 Sup. Ct. 205, and see note to 56 L. Ed. 517-519.

That the shipper selects the route makes no difference. Norfolk & W. R. Co. v. Dixie Tobacco Co., 228 U. S. 593, 57 L. Ed. 980, 33 Sup. Ct. 609, affirming Dixie Tobacco Co. v. N. & W. R. Co., 111 Va. 813, 69 S. E. 1106.

This Section supersedes all state regulation on the same subject. C. B. & Q. R. R. Co. v. Miller, 226 U. S. 513, 57 L. Ed. 323, 33 Sup. Ct. 155; reversing judgment Miller v. Chicago, B. & Q. R. Co., 123 N. W. 449, 85 Neb. 458; Chicago,

St. P. M. & O. Ry. Co. v. Latta, 226 U. S. 519, 57 L. Ed. 328, 33 Sup. Ct. 155, reversing judgments Latta v. Chicago, St. P., M. & O. Ry. Co., 172 Fed. 850, 97 C. C. A. 198, and Chicago, St. P. M. & O. Ry. Co. v. Latta, 184 F. 987; 106 C. C. A. 664; Chicago, R. I. & P. Ry. Co. v. Cramer, 232 U. S. 490, 58 L. Ed. 697, 34 Sup. Ct. 383, reversing Cramer v. C. R. I. & P. Ry. Co., 153 Iowa 103, 133 N. W. 387; A. T. & S. F. Ry. Co. v. Robinson, 233 U. S. 173, 58 L. Ed. 90, 34 Sup. Ct. 556, reversing Robinson v. A. T. & S. F. Ry. Co., 36 Okla. 435, 129 Pac. 20; Pierce Co. v. Wells-Fargo, 236 U. S. 278, 59 L. Ed. 576, 35 Sup. Ct. 351. Intermediate carrier not at fault cannot be sued for loss or damage. Hudson v. Chicago St. P. M. & O. Ry. Co., 226 Fed. 38.

The amendment did not automatically increase rates when the schedule of tariff provided for higher rates where there was no limit to the valuation; it made the carrier liable for the full value of the property, does not apply to export or import shipments, "character" defined and the act applies to baggage. Cummins Amendment, 33 I. C. C. 682. Carmack & Cummins Amendments discussed. Louisiana State Rice Milling Co. v. M. L. & T. R. Co., 34 I. C. C. 511.

**Notes of Decisions Rendered Since 1915.**

First Cummins Amendment to Carmack Amendment copied in full and construed. The Cummins Amendment, 33 I. C. C. 682. Discussed in connection with rates on live stock based on value. Iowa Railroad Commission v. A. T. & S. F. Ry. Co., 36 I. C. C. 79, 84; National Society of Record Asso. v. A. & R. R. Co., 40 I. C. C. 347, 451. Rules for deductions for natural shrinkage sustained. Crouch Grain Co. v. A. T. & S. F. Ry. Co., 41 I. C. C. 717. Second Cummins Amendment copied and express rates based on value approved. Express Rates, Practices, Accounts and Revenues. 43 I. C. C. 510. Rates not approved by Commission based on value are unlawful, Live Stock Classifications 47 I. C. C. 355; Williams Co. v. H. & N. Y. Trans. Co., 48 I. C. C. 269. This rule has been followed in a number of subsequent decisions. The Commission in Silk Asso. of America v. P. R. Co., 50 I. C. C. 50 said: By the second Cummins amendment the provisions of

the first Cummins amendment which invalidated all limitations of the carrier's liability for loss, damage, or injury to property transported were made inapplicable to baggage, and to property, except ordinary live stock, as to which "the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property." In connection with the quoted exception the Commission was empowered "to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation." It is thus seen that the second Cummins amendment placed rates and rating dependent upon the value "declared in writing by the shipper," and those predicated on the value "agreed upon in writing as the released value of the property" in the same category. Both are unlawful unless and until expressly authorized or required by the Commission. See cases last cited.

Cummins amendment did not apply "to traffic moving from points in an adjacent foreign country to points in the United States." Heated Car Serice Regulations, 50 I. C. C. 620, 623. Two-Year-and-One-Day Limitations in bills of lading held to be unreasonable. Decker & Sons v. M. & St. L. R. Co., 55 I. C. C. 453. It would seem that the Commission has held unreasonable what the statute permitted. It will be noted that the amendment of 1920 quoted in this section makes the "period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. " Paragraph f of section 206. Transportation Act 1920 provides: "The period of Federal control shall not be computed as a part of the periods of limitation in actions against carriers or in claims for reparation to the Commission for causes of action arising prior to Federal control."

The remedy under this section "extends to all the connecting carriers over the lines of which the goods are trans-

ported." Mr. Justice Fish citing cases and Watkins, Shippers and Carriers, in Cent. of Ga. Ry. Co. v. Yesbik, 146 Ga. 769, 771, Contra, Johnson Brown Co. v. D. L. & W. R. Co., 239 Fed. 590; Hudson v. C. St. P. M. & O. Ry. Co., 226 Fed. 38. See Blish Milling Company case below.

In the absence of a finding otherwise by the Commission a sixty day's limitation for giving notice of a claim against a telegraph company is reasonable. Gardner v. W. U. Tel. Co., 231 Fed. 405. Responsibility based on rate valid. Postal Tel. & Cable Co. v. Warren-Godwin Lumber Co., 251 U. S. 27, 64 Fed. —, 40 Sup. Ct. —. Where carrier has actual notice of injuries to live stock, written notice need not be given within ten days after unloading. Southern Pac. Co. v. Stewart, 233 Fed. 956, 147 C. C. A. 630. Dismissed by Supreme Court for lack of jurisdiction. Southern Pac. Co. v. Stewart, 245 U. S. 359, 62 L. Ed. 345, 38 Sup. Ct. 130. On rehearing the Supreme Court, Southern Pac. Co. v. Stewart, 248 U. S. 446, 63 L. Ed. —, 39 Sup. Ct. —, sustained its jurisdiction and reversed the Circuit Court of Appeals. It is possible to show facts constituting notice in substance. The court here found that such facts had not been shown quoting the charge of the trial court as follows: "I charge you as a matter of law that if you believe the defendant or its agents or employees did know that five or more of the cattle died while in transit, and also believe that the defendant was negotiating with the plaintiff for a settlement of his claim, and that the defendant knew that the cattle had been injured as alleged in plaintiff's complaint, then the plaintiff was relieved and released from the giving of such notice of loss or injury within ten days as required by the said provisions of said contracts."

Discussing the charge the court said: "Considering the principles and conclusions approved by our opinions in St. Louis, I. M. & S. R. Co. v. Starbird, 243 U. S. 592, 61 L. Ed. 917, 37 Sup. Ct. Rep. 462, and Erie R. Co. v. Stone, 244 U. S. 332, 61 L. Ed. 1173, 37 Sup. Ct. Rep. 633 (announced since the judgment below), and the cases therein cited, no extended discussion is necessary to show that upon the facts here disclosed the stipulation between the parties as to notice in

writing within ten days of any claim for damages was valid. And we also think those opinions make it clear that the circumstances relied upon by the shipper are inadequate to show a waiver by the carrier of written notice as required by the contract.

"The trial court erred in giving to the jury the instruction quoted above; and it should have granted the carrier's request for a directed verdict."

See in this connection Snyder v. King, (Mich.) 165 N. W. 840, 1 A. L. R. 893 and a full note 1 A. L. R. 900, *et seq.*, and Heath v. Sandersville R. Co., (Ga.) 98 S. E. 92; Babbitt v. Grand Trunk Western R. Co., 285 Ill. 267, 120 N. E. 803.

The rule extends the common law liability to the initial carrier regardless of whether or not it caused the injury. Chicago & E. I. R. Co. v. Collins Produce Co., 235 Fed. 857, 149 C. C. A. 169. Affirmed, holding that it is unnecessary to show that the injury was "caused by" a connecting line. Same styled case, 249 U. S. 186, 63 L. Ed. —, 39 Sup. Ct. 189. Carriers may limit liability because of a lesser freight rate. This, however, before the passage of either Cummins amendment. Moore v. Duncan, 237 Fed. 780, 150 C. C. A. 534. Initial carrier liable for a misdelivery. King v. Barbarin, 249 Fed. 303, — C. C. A. —. Provision for notice of injury to live stock in 10 days after unloading, construed, held valid and unwaivable. Olson v. C. B. & Q. R. Co., 250 Fed. 372, — C. C. A. —. See above Sou. Pac. Co. v. Stewart, 233 Fed. 956, 147 C. C. A. 630 holding that actual knowledge makes notice unnecessary but as held by the Supreme Court on appeal, the knowledge must be definite. The measure of recovery for loss or injury is the value of the goods at the time and place where they should have been delivered. McCaull-Dinsmore Co. v. C. M. & St. P. Ry. Co., 252 Fed. 664; affirmed, Chicago M. & St. P. Ry. Co. v. McCaull-Dinsmore Co., 260 Fed. 835, —— C. C. A. ——, 252 U. S. ——64 L. Ed. ——, 40 Sup. Ct. ——.

**All Carriers Parties to the Transportation Liable.** The statute has been regarded by some courts as fixing a new liability for the initial carrier but leaving the connecting carriers

subject only to the common law liability. See Judge Speer's opision 239 Fed. 590 *supra*. The Supreme Court of Ga. in Central of Ga. Ry. Co. v. Yesbik, 146 Ga. 769, *supra*, held: "Where a bill of lading is issued by a railroad company for an interstate shipment over several connecting lines of railroad, the remedy, under that statute, of the holder of the bill of lading, for damages caused by delay in transporting the goods, is not exclusively against the initial carrier, but extends to all the connecting carriers over the lines of which the goods are transported. The liability is that imposed by the Act, as measured by the original contract of shipment so far as it is valid under the Act."

In Georgia F. & A. Ry. Co. v. Blish Milling Co., 15 Ga. App. 142, 82 S. E. 784, the Court of Appeals of Georgia said that "the action is nothing more than that of an action for damages against the delivering carrier," p. 147 of opinion. The case was appealed to the Supreme Court where the facts showed that the shipment was interstate; that the Baltimore & Ohio S. W. R. Co., was the initial carrier; that the Central of Ga. R. Co., transferred the shipment, flour, from one to another car; that the defendant, the delivering carrier first delivered, without payment of the draft or surrender of the bill of lading, the flour to the party to be notified under the order bill of lading; that when this delivery was made the flour was wet; that the delivering carrier retook possession of the flour and the Blish Milling Company, the consignor and holder of the bill of lading, refused to accept the damaged flour and sued the delivering carrier. When the flour became wet or what particular carrier caused the damage does not appear from the facts stated in the opinion. The railroad contended: "1st. That the plaintiff's exclusive remedy was against the initial carrier, the Baltimore & Ohio Southwestern Railroad Company, under the Carmack amendment of § 20 of the Hepburn bill." The Supreme Court said: "The first contention is met by repeated decisions of this court. The connecting carrier is not relieved from liability by the Carmack amendment, but the bill of lading required to be issued by the initial carrier upon an interstate shipment governs the entire transportation, and thus fixes the ob-

ligations of all participating carriers to the extent that the terms of the bill of lading are applicable and valid." Georgia F. & A. R. Co. v. Blish Milling Co., 241 U. S. 190, 194, 195, 60 L. Ed. 948, 36 Sup. Ct. 541 citing Kansas City Southern R. Co. v. Carl, supra, where the Court said: "The liability of any carrier in the route over which the articles were routed, for loss or damage, is that imposed by the Act as measured by the original contract of shipment, so far as it is valid under the Act." In citing the Blish Case, *supra,* Judge Hand refers to a long list of cases and says: "A connecting or terminal carrier's liability is subject to the same rules as the initial carrier's." Lysaght v. Lehigh V. R. Co., 254 Fed. 351, 353. While the language used by Mr. Justice Hughes in the Blish Milling Company case supports the opinion of Mr. Justice Fish of the Supreme Court of Georgia, it would seem that when other than the initial carrier is sued there must be proof actual or presumptive that the defendant caused the injury. In the Blish Milling Company case the law presumed that when the delivering carrier received the freight it was in good condition; and, therefore, when it delivered the freight to the consignee in bad condition presumably it caused the damage. This presumption, there being no evidence to the contrary, was sufficient to support jurisdiction in the Georgia Case. Section applies to a terminal carrier holding possession as a warehouseman. Cleveland, C. C. & St. L. R. Co. v. Dettlebach, 239 U. S. 588, 60 L. Ed. 453, 36 Sup. Ct. 17; Southern R. Co. v. Prescott, 240 U. S. 632, 60 L. Ed. 836, 36 Sup. Ct. 469. See duty of terminal carrier to notify consignee. Stoddard Lumber Co. v. Or. Wash. R. & Nav. Co., 84 Or. 399, 165 Pac. 363, 4 A. L. R. 1275. Damages anywhere in route comprehended by section, New York P. & N. R. Co. v. Peninsula Produce Ex., 240 U. S. 34, 60 L. Ed. 511, 36 Sup. Ct. 230. Notice of claim to an officer or station agent of delivering carrier sufficient. Northern P. Ry. Co. v. Wall, 241 U. S. 87, 60 L. Ed. 905, 36 Sup. Ct. 493. Provision requiring a claim to be filed within four months after delivery valid. Georgia F. & A. R. Co. v. Blish Milling Co., 241 U. S. 190, 60 L. Ed. 948, 36 Sup. Ct. 541. Prior to Cummins amendment limiting value of live stock valid. Cincinnati, N. O. & T. P. R. Co. v. Rankin, 241

U. S. 319, 60 L. Ed. 1022, 36 Sup. Ct. 555. Loss of baggage controlled by section. N. Y. C. & H. R. Co. v. Beaham, 242 U. S. 148, 61 L. Ed. 210, 37 Sup. Ct. 43. "Lawful holder" defined. P. R. Co. v. Olivit Bros., 243 U. S. 574, 61 L. Ed. 908, 37 Sup. Ct. 468. Cannot limit liability for unusual delay. Boston & M. R. Co. v. Piper, 246 U. S. 439, 62 L. Ed. 820, 38 Sup. Ct. 354. Section does not apply to injuries to passengers, Chicago, R. I. & P. R. Co. v. Maucher, 248 U. S. 359, 63 L. Ed. —, 39 Sup. Ct. —; Clark v. Sou. Pac. Ry. Co., 119 N. E. 539; *contra,* Gray v. Col. So. Ry. Co., 204 S. W. 347. Ten days provision for notice not waived under the facts here. So. Pac. Co. v. Stewart, 248 U. S. 446, 63 L. Ed. —, 39 Sup. Ct. —. Five days provision for notice valid. B. & O. R. Co. v. Leach, 249 U. S. 217, 63 L. Ed. —, 39 Sup. Ct. —. Erie R. Co. v. Stuart, 250 U. S. —, 63 L. Ed. —, 39 Sup. Ct. —. Under the statute as now written a provision for less than 90 day's notice is invalid. Limitation in bill of lading of time in which to sue not affected by estoppel. Tex. — Pac. Ry. Co. v. Leatherwood, 250 U. S. —, 63 L. Ed. —, 39 Sup. Ct. —. Consignee liable for freight and railroad cannot be estopped from collecting proper freight charge. Pittsburgh C. C. & St. L. R. Co. v. Fink, 250 U. S. 577, 63 L. Ed. 1151, 40 Sup. Ct. —. This rule it is believed had no application where a consignor prepaid the freight and there was no obligation of the consignee to pay any charges. Section 346a supra now makes it the duty of carriers to collect charges before delivering the freight.

§ 440A. **Bills of lading.**—Congress by the statutes copied sections 439 and 400, *supra,* has to an extent regulated bills of lading and such regulation has been held valid. The Commission has prescribed forms for bills of lading. Bills of Lading, 52 I. C. C. 671. By Act of Congress of August 29, 1916 Congress has legislated as to bills of lading. This act has been held valid. United States v. Ferger, 250 U. S. —, 63 L. E. —, 39 Sup. Ct. —. This statute is annotated in sections 440b and 440rr following. See also section 204a, *ante.*

§ 440b. **Bill of Lading Act.—Transportation Included in Act.**—Bills of lading issued by any common carrier for the transportation of goods in any Territory of the United States, or the District of Columbia, or from a place in a State to a place in a foreign country, or from a place in one State to a place in another State, or from a place in one State to a place in the same State through another State or foreign country shall be governed by this Act.

Section 1 Bill of Lading Act.

Traffic between points in one state but passing through another state is interstate commerce. Section 69, *ante*.

§ 440c. **Straight Bill of Lading.**—A bill in which it is stated that the goods are consigned or destined to a specified person in a straight bill.

Section 2 Bill of Lading Act.

§ 440d. **Order Bill of Lading; Negotiable.**—A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill. Any provision in such bill or in any notice, contract, rule, regulation, or tariff that it is nonnegotiable shall be null and void and shall not effect its negotiability within the meaning of this Act unless upon its face and in writing agreed to by the shipper.

Section 3 Bill of Lading Act.

§ 440e. **Certain Order Bills.**—Order bills issued in a State for the transportation of goods to any place in the United States on the Continent of North America, except Alaska and Panama, shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to any one who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts: *Provided*, however, That nothing contained in this section shall be interpreted or construed to forbid the issuing of order bills in parts or sets for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries, or to impose the liability set forth in this section for so doing.

Section 4 Bill of Lading Act.

§ 440f. **Indorsement on Order Bill.**—When more than one order bill is issued in a state for the same goods to be transported to any place in the United States on the Continent of North America, except Alaska and Panama, the word "duplicate," or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill. Provided, however, That nothing contained in this section shall in such case for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries be interpreted or construed so as to require the placing of the word "duplicate" thereon, or to impose the liabilities set forth in this section for failure so to do.

Section 5 Bill of Lading Act.

§ 440g. **Indorsement on Straight Bill of Lading.**—A straight bill shall have placed plainly upon its face by the carrier issuing it "nonnegotiable" or "not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character.

Section 6 Bill of Lading Act.

§ 440h. **Insertion of Name of Person to be Notified.**—The insertion in an order bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill or constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

Section 7 Bill of Lading Act.

§ 440i. **Duty of Carrier to Deliver Goods on Demand.**—A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods or, if the bill is an order bill, by the holder thereof, if such a demand is accompanied by—

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods;

(b) Possession of the bill of lading and an offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is an order bill; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods, in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

Section 8 Bill of Lading Act.

§ 440j. **Persons to Whom Carrier May Deliver Goods.**—A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is—

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a straight bill for the goods, or

(c) A person in possession of an order bill for the goods, by the terms of which the goods are deliverable to his order, or which has been endorsed to him, or in blank by the consignee, or by the mediate or immediate indorsee of the consignee.

Section 9 Bill of Lading Act.

§ 440k. **Liability of Carrier in Case of Delivery of Goods to Wrong Person.**—Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to any one having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions he shall be so liable if prior to such delivery he—

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

Such request or information, to be effective within the meaning of this section, must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods.

Section 10 Bill of Lading Act.

§ 440l. **Liability of Carrier to Purchaser of Order Bill.**—Except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers goods for which an order bill has been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to any one who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier and notwithstanding delivery was made to the person entitled thereto.

Section 11 Bill of Lading Act.

§ 440m. **Liability in Case of Part of Goods.**—Except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers part of the goods for which an order bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered with a description which may be in general terms either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill to any one who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any por-

tion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto.

Section 12 Bill of Lading Act.

§ 440n. **Alterations.**—Any alteration, addition, or erasure in a bill after its issue without authority from the carrier issuing the same, either in writing or noted on the bill, shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor.

Section 13 Bill of Lading Act.

œ 440o. **Courts May Order Delivery of Goods on Loss of Order Bill of Lading.**—Where an order bill has been lost, stolen, or destroyed a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss, theft, or destruction and upon the giving of a bond, with sufficient surety, to be approved by the court, to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees: *Provided,* a voluntary indemnifying bond without order of court shall be binding on the parties thereto.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the order bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

Section 14 Bill of Lading Act.

§ 440p. **Liability of Carrier on Bill of Lading Indorsed "Duplicate."**—A bill, upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed, plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurrate copy of an original bill issued, but no other liability.

Section 15 Bill of Lading Act.

§ 440q. **Adverse Claim of Title.**—No title to goods or right to their possession asserted by a carrier for his own benefit shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien.

Section 16 Bill of Lading Act.

§ 440r. **Requiring Conflicting Claimants to Interplead.**—If more than one person claim the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for non-delivery of the goods or as an original suit, whichever is appropriate.

Section 17 Bill of Lading Act.

§ 440s. **Delivery by Carrier When Informed of Adverse Claim to Goods.**—If some one other than the consignee or the person in possession of the bill has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

Section 18 Bill of Lading Act.

§ 440t. **Claim of Third Person Enforced by Legal Process.** Except as provided in the two preceding sections and in section nine, no right or title of a third person, unless enforced by legal process, shall be a defense to an action brought by the consignee of a straight bill or by the holder of an order bill against the carrier for failure to deliver the goods on demand.

Section 19 Bill of Lading Act.

§ 440u. **Shipper's Weight, Load and Count.**—When goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and

quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation, or tariff, "Shipper's weight, load and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

Section 20 Bill of Lading Act.

§ 440v. **Weight, Load and Count.**—When package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the conditions which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also by inserting in the bill of lading the words "Shipper's weight, load and count," or other words of like purport, indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill of lading. *Provided*, however, Where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable

time after such written request, and the carriers shall not in such cases insert in the bill of lading the words "Shipper's weight," or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

Section 21 Bill of Lading Act.

§ 440w. **Liability of Carrier on Bill of Lading Issued by its Agent.**—If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bill of lading therefor for transportation in commerce among the several States and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage *in transitu* or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

Section 22 Bill of Lading Act.

§ 440x. **Attachment by Garnishment.**—If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner, and an order bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise or be levied upon under an execution unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

Section 24 Bill of Lading Act.

Rule as to attachments prior to this statute. Sec. 42, *ante*.

§ 440y. **Remedies of Creditor.**—A creditor whose debtor is the owner of an order bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill or in satisfying the claim by means thereof as is allowed at law or in equity in regard to

property which cannot readily be attached or levied upon by ordinary legal process.

Section 24 Bill of Lading Act.

§ 440z. **Lien of Carrier.**—If an order bill is issued the carrier shall have a lien on the goods therein mentioned for all charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill and all other charges incurred in transportation and delivery, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

Section 25 Bill of Lading Act.

§ 440aa. **Liability of Carrier After Sale of Goods.**—After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods themselves to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be an order bill.

Section 26 Bill of Lading Act.

§ 440bb. **Negotiation of Order Bill by Delivery.**—An order bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank.

An order bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiations may be made in like manner.

Sections 27 and 28 Bill of Lading Act.

§ 440cc. **Transfer of Bill by Delivery.**—A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby. A straight bill cannot be negotiated free from existing equities, and the indorsement of such a bill gives the transferee no additional right.

Section 29 Bill of Lading Act.

§ 440dd. **Negotiation of Order Bill by Person in Possession.**—An order bill may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the bill the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.

Section 30 Bill of Lading Act.

§ 440ee. **Title and Rights Acquired by Transferee.**—A person to whom an order bill has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

Section 31 Bill of Lading Act.

§ 440ff. **Rights of Transferee.**—A person to whom a bill has been transferred, but not negotiated, acquires thereby as against the transferor the title to the goods, subject to the terms of any agreement with the transferor. If the bill is a straight bill such person also acquires the right to notify the carrier of the transfer to him of such bill and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a straight bill the title of the trans-

feree to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time, with the exercise of reasonable diligence, to communicate with the agent or agents having actual possession or control of the goods.

Section 32 Bill of Lading Act.

§ 440gg. **Compelling Indorsement of Order Bill.**—Where an order bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiations shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

Section 33 Bill of Lading Act.

§ 440hh. **Warranties Extend to Negotiation of Bill for Value.**—A person who negotiates or transfers for value a bill by indorsement or delivery, unless a contrary intention appears, warrants—

(a) That the bill is genuine;

(b) That he has a legal right to transfer it;

(c) That he has knowledge of no fact which would impair the validity or worth of the bill;

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer without a bill the goods represented thereby.

Section 34 Bill of Lading Act.

§ 440ii. **Liability of Indorser for Acts of Carrier or Previous Indorsers.**—The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations.

Section 35 Bill of Lading Act.

œ 440jj. **Warranties by Mortgagee.**—A mortgagee or pledgee or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or warrant the genuineness of such bill or the quantity or quality of the goods therein described.

Section 36 Bill of Lading Act.

§ 440kk. **Bona Fide Purchaser of Bill Wrongly Negotiated.**—The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, loss, theft, or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, loss, theft, or conversion.

Section 37 Bill of Lading Act.

§ 440ll. **Negotiation of Order Bill by Mortgagor.**—Where a person, having sold, mortgaged, or pledged goods which are in a carrier's possession and for which an order bill has been issued, or having sold, mortgaged, or pledged the order bill representing such goods, continues in possession of the order bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

Section 38 Bill of Lading Act.

§ 440mm. **Superior Rights of Bona Fide Purchaser of Order Bill.**—Where an order bill has been issued for goods no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

Section 39 Bill of Lading Act.

§ 440nn. **Lien Valid.**—Except as provided in section thirty-nine, nothing in this Act shall limit the rights and remedies of a mortgagee or lien holder whose mortgage or lien on goods would be valid, apart from this Act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them.

Section 40 Bill of Lading Act.

§ 440oo. **Forgery or Counterfeiting Bill of Lading; Penalty.**—Any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment among the several States or with foreign nations, or with like intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provision of this Act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished for

each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both.

Section 41 Bill of Lading Act.

A conviction may be had under this section. United States v. Ferger, 250 U. S. —, 63 L. Ed. —, 39 Sup. Ct. —.

§ 440pp. **Definitions.**—First. That in this Act, unless the context of subject matter otherwise requires—.

"Action" includes counterclaim, set-off, and suit in equity.

"Bill" means bill of lading governed by this Act.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Person" includes a corporation or partnership, or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"State" includes any territory, district, insular possession, or isthmian possession.

Section 42 Bill of Lading Act.

§ 440qq. **Retroactive Effect.**—The provisions of this Act do not apply to bills made and delivered prior to the taking effect thereof.

Section 43 Bill of Lading Act.

§ 440rr. **Invalidity of Part of Act.**—The provisions and each part thereof and the sections and each part thereof of this Act are independent and severable, and the declaring of any provision or part thereof, or provisions or part thereof, or section or part thereof, unconstitutional shall not impair or render unconstitutional any other provision or part thereof or section or part thereof.

Section 44 Bill of Lading Act.

Section 45 makes the Act effective January 1, 1917.

§ 441. **Carrier, as Used in This and Next Eleven Section, Defined.**—That as used in this section the term "carrier" means a common carrier by railroad (except a street, suburban, or interurban electric railway which is not operated as part of a general steam railroad system of transportation) which is subject to this Act, or any corporation organized for the purpose of engaging in transportation by railroad subject to this Act.

Section 441 to 441k are taken from section 20a of Interstate Commerce Act and were added by section 439 Transportation Act 1920. This section is paragraph 1.

§ 441a. **Security Issues Regulated.**—From and after one hundred and twenty days after this section takes effect it shall be unlawful for any carrier to issue any share of capital stock or any bond or evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed "securities") or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

Paragraph 2 section 20a.

§ 441b. **Power of Commission Over Applications to Issue Securities.**—The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate is the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any securities so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of the foregoing paragraph (2).

Paragraph 3 section 20a.

§ 441c. **Commission to Prescribe Form of Applications.**—Every application for authority shall be made in such form and contain such matters as the Commission may prescribe. Every such application, as also every certificate of notification hereinafter provided for, shall be made under oath, signed and filed on behalf of the carrier by its president, a vice president, auditor, comptroller, or other executive officer having knowledge of the matters therein set forth and duly designated for that purpose by the carrier.

Paragraph 4 of section 20a.

§ 441d. **Notice of Sale of Securities Required.**—Whenever any securities set forth and described in any application for authority or certificate of notification as pledged or held unencumbered in the treasury of the carrier shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of by the carrier, such carrier shall, within ten days after such sale, pledge, repledge, or other disposition, file with the Commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the Commission.

Paragraph 5 section 20a.

§ 441e. **Notice of Applications, How Served.**—Upon receipt of any such application for authority the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which the applicant carrier operates. The railroad commissions, public service or utilities commissions, or other appropriate State authorities of the State shall have the right to make before the Commission such representations as they may deem just and proper for preserving and conserving the rights and interest of their people and the States, respectively, involved in such proceeding. The Commission may hold hearings, if it sees fit, to enable it to determine its decision upon the application for authority.

Paragraph 6 of section 20a.

§ 441f. **Exclusive and Plenary Jurisdiction Given Commission.**—The jurisdiction conferred upon the Commission by this section shall be exclusive and plenary, and a carrier may issue securities and assume obligations or liabilities in accordance with the provisions of this section without securing approval other than as specified herein.

Paragraph 7 section 20a.

§ 441g. **No Guarantee by United States.**—Nothing herein shall be construed to imply any guaranty or obligation as to such securities on the part of the United States.

Paragraph 8 of section 20a.

§ 441h. **Not Applicable to Notes—Rule as to No Par Stock.**—The foregoing provisions of this section shall not apply to notes to be issued by the carrier maturing not more than two years after the date thereof and aggregating (together with all other then outstanding notes of a maturity of two years or less) not more than 5 per centum of the par value of the securities of the carrier then outstanding. In the case of securities having no par value, the par value for the purposes of this paragraph shall be the fair market value as of the date of issue. Within ten days after the making of such notes the carrier issuing the same shall file with the Commission a certificate of notification, in such form as may from time to time be determined and prescribed by the

Commission, setting forth as nearly as may be the same matters as those required in respect of applications for authority to issue other securities: Provided, That in any subsequent funding of such notes the provisions of this section respecting other securities shall apply.

Paragraph 9 section 20a.

§ 441i. **Reports of Carriers Showing Security Issues Required.**—The Commission shall require periodical or special reports from each carrier hereafter issuing any securities, including such notes, which shall show, in such detail as the Commission may require, the disposition made of such securities and the application of the proceeds thereof.

Paragraph 10 section 20a.

§ 441j. **Securities Not Authorized Void—Penalties.**—Any security issued or any obligation or liability assumed by a carrier, for which under the provisions of this section the authorization of the Commission is required, shall be void, if issued or assumed without such authorization therefor having first been obtained, or if issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption; but no security issued or obligation or liability assumed in accordance with all the terms and conditions of such an order of authorization therefor as modified by any order supplemental thereto entered prior to such issuanse or assumption, shall be rendered void because of failure to comply with any provision of this section relating to procedure and other matters preceding the entry of such order of authorization. If any security so made void or any security in respect to which the assumption of obligation or liability is so made void, is acquired by any person for value in good faith and without notice that the issue or assumption is void, such person may in a suit or action in any court of competent jurisdiction hold jointly and severally liable for the full amount of the damage sustained by him in respect thereof, the carrier which issued the security so made void, or assumed the obligation or liability so made void, and its directors, officers, attorneys, and other agents, who partici-

pated in any way in the authorizing, issuing, hypothecating, or selling of the security so made void or in the authorizing of the assumption of the obligation or liability so made void. In case any security so made void was directly acquired from the carrier issuing it the holder may at his option rescind the transaction and upon the surrender of the security recover the consideration given therefor. Any director, officer, attorney, or agent of the carrier who knowingly assents to or concurs in any issue of securities or assumptions of obligation or liability forbidden by this section, or any sale or other disposition of securities contrary to the provisions of the Commission's order or orders in the premises, or any application not authorized by the Commission of the funds derived by the carrier through such sale or other dispostion of such securities, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $1,000 nor more than $10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

Paragraph 11 section 20a.

§ 441k. **Interlocking Railway Directorates Regulated.**— After December 31, 1921, it shall be unlawful for any person to hold the position of officer or director of more than one carrier, unless such holding shall have been authorized by order of the Commission, upon due showing, in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby. After this section takes effect it shall be unlawful for any officer or director of any carrier to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of an operating carrier from any funds properly included in capital account. Any violation of these provisions shall be a misdemeanor, and on conviction in any United States court having jurisdiction shall be punished by a fine of not less than $1,000 nor more than

$10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

Paragraph 12 section 20a.

§ 4411. **Annual Reports by Commission to Congress.**—That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

Section twenty-one as amended by Act March 2, 1889.

The original Act said "reports issued from the Interior Department," where the present act says "reports transmitted to Congress." The amendment also added the words, "and the names and compensation of the persons employed by said Commission."

Cited in discussing the scope of the powers of the Commission. United States v. Lake S. & M. S. Ry. Co., 197 U. S. 536, 49 L. Ed. 870, 25 Sup. Ct. 538; Harriman v. Int. Com. Com., 211 U. S. 407, 420, 421, 53 L. Ed. 253, 29 Sup. Ct. 115.

§ 442. **Circumstances under Which Reduced or Free Fares and Rates May Be Given.**—That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, state or municipal governments, or for charitable purposes, or to and from fairs and expositions for exibition thereat (or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation), or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving

reduced rates to ministers of religion (or to municipal governments for the transportation of indigent persons, or to the ismates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of manangers of said homes); nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees.

Part of section twenty-two as amended by Act March 2, 1889.

The original Act used the words "apply to" in the first line where the amended Act uses the word "prevent." The words in brackets in the above copied section were added by Act of March 2, 1889.

Individuals desiring to make proposals to sell the government Indian supplies may receive special rates. Re Indian Supplies, 1 I. C. C. 22. Pass issued to induce the holder to throw business to carrier illegal. Slater v. N. Pac. R. Co., 2 I. C. C. 359, 2 I. C. R. 243. Men eminent for public service not on that account alone entitled to use passes. Re Carriage of Persons Free or at Reduced Rates, 5 I. C. C. 69, 3 I. C. R. 717. Illegal to grant pass to members of city council. Harvey v. L. & N. R. Co., 5 I. C. C. 153, 3 I. C. R. 793. Land and immigration agents not entitled to free pass. Re Complaint of Illinois Central R. Co., 12 I. C. C. 7. Rule announced as to employees of telegraph companies. Re Railroad Telegraph Contracts, 12 I. C. C. 10. Caretakers of newspapers not excepted by section. Re Free Transportation of Newspaper Employees, 12 I. C. C. 15. Nor are employees of baggage express companies. Re Right of Railroad Companies to Exchange Transportation with Transfer Companies 12 I. C. C. 39. Section cited. Export Shipping Co. v. Wabash R. Co., 14 I. C. C. 437, 455. Exception does not apply to families of officers or employees. Ex parte Kœhler, 31 Fed. 315, 12 Sawy. 446. Section as originally enacted by making

certain exceptions was not intended to prohibit party rate tickets. Int. Com. Com. v. B. & O. R. Co., 43 Fed. 37, 45, 3 I. C. C. 192. Affirmed, with same holding, 145 U. S. 263, 36 L. Ed. 699, 12 Sup. Ct. 844. To issue pass to person not excepted by section is illegal discrimination. Re Charge to Grand Jury, 66 Fed. 146. Exceptions do not apply to officers of express companies. United States v. Wells Fargo Express Co., 161 Fed. 606, 609. Affirmed. American Ex. Co. and other Express Co.'s v. United States, 212 U. S. 522, 53 L. Ed. 635, 29 Sup. Ct. 315. Publishers can not pay for transportation by advertising. United States v. Chicago, I. & L. Ry. Co., 163 Fed. 114, 219 U. S. 486, 55 L. Ed. 305, 31 Sup. Ct. 272. Does not probibit free transportation of employees of the Federal government engaged in the postal service. 18 Opin. Atty-Gen. 587.

**Notes of Decisions Rendered Since 1909.**

See notes Section 342, *supra.*

Carriers may give reduced rates to municipal authorities, but what they may do is a very different thing from what they may be required to do. Metropolitan Paving Brick Co. v. A. & R. R. Co., 17 I. C. C. 197, 204; Field v. S. R. Co., 13 I. C. C. 298; Carnegie Board of Trade v. P. R. Co., 28 I. C. C., 122, 129: Dairyman's Supply Co. v. P. R. Co., 28 I. C. C. 406, 408. Excursion tickets not to be issued as to abuse the privilege. Weber Club Intermountain Fair Ass'n v. O. S. L. R. Co., 17 I. C. C. 212. Mileage books voluntarily issued are subject to the general provisions of the statute. Commutation Rate case, 21 I. C. C. 428, 442, citing cases. Free pass situation discussed. Colorado Free Pass Investigation, 26 I. C. C. 491. A carrier subject to the Act may exchange transportation with other common carriers not subject to the Act. U. S. v. Erie R. Co., 213 Fed. 391. "Mileage books" discussed and cases cited. Re Mileage Books, 28 I. C. C. 318; Re Mileage, Excursion and Commutation Tickets, 23 I. C. C. 95. The Supreme Court of Georgia held that carriers having issued mileage books, such books could be regulated by the Railroad Commission of the state, and that then Commission could require the carrier to accept the mileage

on trains without demanding an exchange for a ticket. Railroad Commission of Ga. v. L. & N. R. Co., 140 Ga. 817, 80 S. E. 327, cited in Wadley So. v. Georgia, 235 U. S. 651, 59 L. Ed. 405; 35 Sup. Ct. 214. See *contra*, Lake S. & M. S. Ry. Co. v. Smith, 173 U. S. 684, 43 L. Ed. 858, 19 Sup. Ct. 565; State v. Boneval, 128 La. 702, 55 So. 569, Ann Cases 1912 C. 837; Virginia-Commonwealth ex rel. v. A. C. L, 106 Va. 61, 55 S. E. 572, 7 L. R. A. (N. S.) 1086, 117 Am. St. Rep. 983, and North Dakota—State v. Great N. Ry. Co., 17 N. D. 370, 116 N. W. 89, St. Louis, Mo. Illinois Passenger Fares, 41 I. C. C. 584, 600.

§ 443. **Existing Remedies Not Abriged or Altered. Pending Litigation Not Affected.**—And nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided,* That no pending litigation shall in any way be affected by this act.

Part of section twenty-two as originally enacted.

Right of courts to enjoin an illegal advance in rates before they become effective not supplanted by special remedies granted by the Act to Regulate Commerce. Tift v. So. Ry. Co., 123 Fed. 789, 138 Fed. 753. Affirmed. So. Ry. Co., v. Tift, 148 Fed. 1021, 206 U. S. 428, 51 L. Ed. 1124, 27 Sup. Ct. 709; Jewett Bros. v. Chicago, M. & St. P. R. Co., 156 Fed. 160; Kalispell Lumber Co. v. Great N. R. Co., 157 Fed. 845. Reversed because rate had become effective before injunction applied for. 165 Fed. 25, 91 C. C. A. 63. Kiser v. Cent. of Ga. Ry. Co., 158 Fed. 193; Macon Grocery Co. v. Atlantic C. L. R. Co., 163 Fed. 736. Reversed. Altantic C. L. R. Co. v. Macon Grocery Co., 166 Fed. 206, 92 C. C. A. 114. Nor. Pac. Ry. Co. v. Pacific Coast Lumber Mfg. Asso., 165 Fed. 1. Union Pac. R. Co. v. Oregon & W. L. Mfg. Asso., 165 Fed. 13, 91 C. C. A. 51. *Contra* if the rates have become effective. Potlatch Lumber Co. v. Spokane Falls & N. Ry. Co., 157 Fed. 588; Great N. Ry. Co. v. Kalispell Lumber Co., 165 Fed. 25, 91 C. C. A. 63. Circuit courts can not enjoin the taking effect of an illegal advance prior to action by the Interstate Commerce Commission. Atlantic Coast L. R. Co. v. Macon Grocery Co., 166 Fed. 206. While a court has jurisdiction to enjoin an illegal advance before

it becomes effective, it can not do so merely as ancillary to a complaint before the Commission. Jewett Bros. v. Chicago, M. & St. P. Ry. Co., 156 Fed. 160. The cases holding that injunctions may be granted, *supra,* also hold that jurisdiction in the Federal Courts being exclusive, suit may be brought wherever the defendant can be found and served. In Sunderland Bros. v. Chicago, R. I. & P. R. Co., 158 Fed. 877, it was held that suit could only be brought in the district of the residence of either the complainant or the defendant. Notwithstanding this section, courts have no jurisdiction to award damages for excessive rates prior to a determination by the Commission that such rates are excessive. Tex. & Pac. Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 446, 51 L. Ed. 553, 561, 27 Sup. Ct. 350. But this decision does not mean that an illegal advance may not be enjoined. So. Ry. Co. v. Tift, 206 U. S. 428, 51 L. Ed. 112, 27 Sup. Ct. 709. Same effect as Abilene case, *supra.* Gatton v. Chicago, etc., R. Co., 95 Iowa, 113.

This Section must be construed with the whole Act, which Act so construed gives the Commission jurisdiction to determine the questions of the lawfulness and unlawfulness of rates. Mitchell Coal & Coke Co. v. P. R. Co., 230 U. S. 247, 57 L. Ed. 1472, 33 Sup. Ct. 916; same styled case below, 181 Fed. 403, 183 Fed. 908; Morrisdale Coal Co. v. P. R. Co., 230 U. S. 304, 57 L. Ed. 1474, 33 Sup. Ct. 939, affirming same styled case, 183 Fed. 929, 106 C. C. A. 269. But where an act is required by law and the Commission has no duty to perform the courts have jurisdiction. Penn R. Co., v. International Coal Co., 230 U. S. 184, 57 L. Ed. 1446, 33 Sup. Ct. 983; So. Ex. Co. v. Long, 202 Fed. 462, 120 C. C. A. 568; reversing Long v. So. Ex. Co., 201 Fed. 441. The courts may not in the first instance determine whether a rate is inherently reasonable. A. T. & S. F. Ry. Co. v. U. S., 203 Fed. 56. Op. Com. Ct. No. 61, p. 537; Atl. Coast Line R. Co. v. Int. Com. Com., 194 Fed. 449; L. & N. Ry. Co. v. Int. Com. Com., 195 Fed. 541; Int. Com. Com. & U. S. v. L. & N. Ry. Co., 227 U. S. 88, 33 Sup. Ct. 185, 57 L. Ed. 431; Robisson v. B. & O. R. Co., 222 U. S. 506, 56 L. Ed. 288, 32 Sup. Ct. 114.

§ 444. **Interchangeable Mileage Tickets, How Issued.**— Privided further that nothing in this act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mlieage tickets of one thousand or more miles. But before any common carrier, subject to the provision of this act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this act; and all the provisions of said section six relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section ten of this act shall apply to any violation of the requirements of this proviso.

Proviso to section twenty-two added by the Act of February 8, 1895.

Proviso applies only to the issuance of such tickets and the terms, conditions and the persons to whom issued must be without discrimination. Larrison v. Chicago & G. T. R. Co., 1 I. C. C. 147, 1 I. C. R. 369. Excursion and commutation tickets are not the basis for fixing price of mileage tickets. Associated Wholesale Grocers of St. Louis v. Mo.

Pac. R. Co., 1 I. C. C. 156, 1 I. C. R. 393. Mileage, excursion or commutation tickets must be offered impartially. Re Passenger Tariffs, 2 I. C. C. 649, 2 I. C. R. 445. Party rates should not be lower than contemporaneous single tickets. Pittsburg, C. & St. L. R. Co. v. B. & O. R. Co., 3 I. C. C. 465, 2 I. C. R. 729. Order not enforced. Int. Com. Com. v. B & O. R. Co., 43 Fed. 37, 145 U. S. 263, 36 L. Ed. 699, 12 Sup. Ct. 844, 4 I. C. R. 92. Provision merely permissive and gives the Commission no power to compel the issuance of mileage tickets. Sprigg v. B. & O. R. Co., 8 I. C. C. 443, 450. See the able and cogent dissenting opinion of Mr. Commissioner Clements, 457 *et seq.* See Re Party Rate Tickets, 12 I. C. C. 95. Export Shipping Co. v. Wabash R. Co., 14 I. C. C. 437, 455. Tariff Circular No. 18-A.

**Notes of Decisions Rendered Since 1909.**

See notes to Sec. 442 *supra.*

§ 445. **Discrimination May Be Prevented by Writ of Mandamus, Remedy Cumulative.**—That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the Act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: Provided, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: Provided, That the remedy, hereby given by writ of man-

damus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this Act or the Act to which it is a supplement.

New section, section twenty-three, added by Act March 2, 1889, and being section ten of that Act.

Cited in support of the holding that a carrier cannot discriminate in favor of industries on its own line against industries on a connecting line. Standard Lime & Stone Co. v. Cumberland V. R. Co., 15 I. C. C. 620. Remedy is given only for unjust discrimination. United States v. N. & W. Ry. Co., 109 Fed. 831. Second suit abated pending appeal of the first one. United States v. Norfolk & W. Ry. Co., 114 Fed. 682. Suit brought under authority of section and amendment of Feb. 8, 1895. United States v. West Virginia N. R. Co., 125 Fed. 252. Affirmed, holding that writ may run against individuals. West Virginia N. R. Co. v. United States, 134 Fed. 198, 67 C. C. A. 220. Writ will not issue to enforce a private contract for car distribution. United States v. Norfolk & W. R. Co., 138 Fed. 849. Reversed, holding that a right exists for an equal distribution of cars, and a contract therefor is in aid of the act and may be enforced. Same style case, 143 Fed. 266, 74 C. C. A. 404. Mandamus will not issue in suit by United States except under authority of a statute. United States ex rel. Knapp et al. Commissioners v. Lake Shore & M. S. Ry. Co., 197 U. S. 536, 49 L. Ed. 870, 25 Sup. Ct. 538. Act cumulative and not exclusive of preexisting remedies. Tift v. So. Ry. Co., 123 Fed. 789, 138 Fed. 753. Affirmed. So. Ry. Co. v. Tift, 148 Fed. 1021, 206 U. S. 428, 41 L. Ed. 1124, 27 Sup. Ct. 709. Car distribution determined in suit under section. United States v. B. & O. R. Co., 154 Fed. 108. Sustained in so far as relief granted relator and reversed because other relief not granted. United States v. B. & O. R. Co., 165 Fed. 113, 91 C. C. A. 147. This section does not prevent an individual from applying to the Commission, and this even when another operator has filed a complaint for mandamus. Merchants Coal Co. v. Fairmont Coal Co., 160 Fed. 769, 88 C. C. A. 23. Appealed to Supreme Court. 163 Fed. 1021, 1022. Injunction will not issue to prevent considering private cars in making distribution of cars to coal companies. Majestic Coal & Coke

Co. v. Ill. Cent. R. Co., 162 Fed. 810. Private cars should be charged against their owners in making distribution. United States ex rel. Pitcairn Coal Co. v. B. & O. R. Co.. 165 Fed. 113.

**Notes of Decisions Rendered Since 1909.**

Right stated and case brought under this Section. B. & O. R. Co. v. United States ex rel. Pitcairn Coal Co., 215 U. S. 481, 54 L. Ed. 292, 30 Sup. Ct. 164. Reversing U. S. ex rel. Pitcairn Coal Co. v. B. & O. R. Co., 165 Fed. 113, 91 C. C. A. 147; Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 380. See also notes Section 20, Sec. 437 *supra.*

§ 446. **Number, Terms, Qualification, Salary and Appointment of Commissioners.**—That the Commission is hereby enlarged so as to consist of eleven members, with terms of seven years, and each shall receive $12,000 compensation annually. The qualifications of the members and the manner of payment of their salaries shall be as already provided by law. Such enlargement of the Commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December 31, 1923, and one for a term expiring December 31, 1924. The terms of the present commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. Not more than six commissioners shall be appointed from the same political party. Hereafter the salary of the secretary of the Commission shall be $7,500 a year.

Section 24 as amended by Transportation Act 1920. The former section was enacted June 29, 1906 and amended June 18, 1910. The changes made by the new section are, increasing the number of Commissioners from 9 to 11, rais-

ing the salary from $10,000.00 to $12,000.00, and fixing the amount of the salary of the Secretary which was formerly $5,000.00. See section 388, *supra*.

§446a. **Certain Water Carriers to File Schedules.**—That every common carrier by water in foreign commerce, whose vessels are registered under the laws of the United States, shall file with the Commission, within thirty days after this section becomes effective and regularly thereafter as changes are made, a schedule or schedules showing for each of its steam vessels intended to load general cargo at ports in the United States for foreign destinations (a) the ports of loading, (b) the dates upon which such vessels will commence to receive freight and dates of sailing, (c) the route and itinerary such vessels will follow and the ports of call for which cargo will be carried.

Paragraph 1 of section 25 as added by section 441 of Transportation Act 1920.

§ 446b. **Information to be Furnished by Water Carriers.**—Upon application of any shipper a carrier by railroad shall make request for, and the carrier by water shall upon receipt of such request name, a specific rate applying for such sailing, and upon such commodity as shall be embraced in the inquiry, and shall name in connection with such rate, port charges, if any, which accrue in addition to the vessel's rates and are not otherwise published by the railway as in addition to or absorbed in the railway rate. Vessel rates, if conditioned upon quantity of shipment, must be so stated and separate rates may be provided for carload and less than carload shipments. The carrier by water, upon advices from a carrier by railroad, stating that the quoted rate is firmly accepted as applying upon a specifically named quantity of any commodity, shall, subject to such conditions as the Commission by regulation may prescribe, make firm reservation from unsold space in such steam vessel as shall be required for its transportation and shall so advise the carrier by railroad, in which advices shall be included the latest available information as to prospective sailing date of such vessel.

Paragraph 2 of section 25 as added by section 441 of Transportation Act 1920.

§ 446c. **Changes of Schedules To Be Filed.**—As the matters so required to be stated in such schedule or schedules are changed or modified from time to time, the carrier shall file with the Commission such changes or modifications as early as practicable after such modification is ascertained. The Commission is authorized to make and publish regulations not inconsistent herewith governing the manner and form in which such carriers are to comply with the foregoing provisions. The Commission shall cause to be published in compact form, for the information of shippers of commodities throughout the country, the substance of such schedules, and furnish such publications to all railway carriers subject to this Act, in such quantities that railway carriers may supply to each of their agents who receive commodities for shipment in such cities and towns as may be specified by the Commission, a copy of said publication; the intent being that each shipping community sufficiently important, from the standpoint of the export trade, to be so specified by the Commission shall have opportunity to know the sailings and routes, and to ascertain the transportation charges of such vessels engaged in foreign commerce. Each railway carrier to which such publication is furnished by the Commission is hereby required to distribute the same as aforesaid and to maintain such publication as it is issued from time to time, in the hands of its agents. The Commission is authorized to make such rules and regulations not inconsistent herewith respecting the distribution and maintenance of such publications in the several communities so specified as will further the intent of this section.

Paragraph 3 of section 25, as added by section 441 of Transportation Act 1920.

§ 446d. **Through Bills of Lading Required.**—When any consignor delivers a shipment of property to any of the places so specified by the Commission, to be delivered by a railway carrier to one of the vessels upon which space has been reserved at a specified rate previously ascertained, as

provided herein, for the transportation by water from and for a port named in the aforesaid schedule, the railway carrier shall issue a through bill of lading to the point of destination. Such bill of lading shall name separately the charge to be paid for the railway transportation, water transportation, and port charges, if any, not included in the rail or water transportation charge; but the carrier by railroad shall not be liable to the consignor, consignee, or other person interested in the shipment after its delivery to the vessel. The Commission shall, in such manner as will preserve for the carrier by water the protection of limited liability provided by law, make such rules and regulations not inconsistent herewith as will prescribe the form of such through bill of lading. In all such cases it shall be the duty of the carrier by railroad to deliver such shipment to the vessel as a part of its undertaking as a common carrier.

Paragraph 4 of section 25, as added by section 441 Transportation Act 1920.

§ 446e. **Such Through Lading Not An Arrangement for Continuous Carriage.**—The issuance of a through bill of lading covering shipments provided for herein shall not be held to constitute "an arrangement for continuous carriage or shipment" within the meaning of this Act.

Paragraph 5 of section 25, as added by section 441 Transportation Act 1920.

§ 446f. **Automatic Train-Stop or Train-Control Devices May Be Required.**—That the Commission may, after investigation, order any carrier by railroad subject to this Act, within a time specified in the order, to install automatic train-stop or train-control devices, or other safety devices, which comply with specifications and requirements prescribed by the Commission, upon the whole or any part of its railroad, such order to be issued and published at least two years before the date specified for its fulfillment: Provided, That a carrier shall not be held to be negligent because of its failure to install such devices upon a portion of its railroad not included in the order; and any action arising because of an accident happening upon such

portion of its railroad shall be determined without consideration of the use of such devices upon another portion of its railroad. Any common carrier which refuses or neglects to comply with any order of the Commission made under the authority conferred by this section shall be liable to a penalty of $100 for each day that such refusal or neglect continues, which shall accrue to the United States, and may be recovered in a civil action brought by the United States.

Section 26 of Interstate Commerce Act, added by section 441 Transportation Act 1920.

§ 446g. **Title of Act.**—That this Act may be cited as the "Interstate Commerce Act."

Section 27 added by section 441 Transportation Act 1920. See also section 334a, *supra.*

§ 447. **Existing Laws as to Obtaining Testimony Applicable to Act.**—That all existing laws relating to the attendance of witnesses and the production of evidence and the compelling of testimony under the act to regulate commerce and all acts amendatory thereof shall apply to any and all proceedings and hearings under this act.

Section nine of the Act of June 29, 1906.

Cited in discussion of the power of the Commission to make investigations. Harriman v. Int. Com. Com., 211 U. S. 407, 422, 53 L. Ed. 253, 29 Sup. Ct. 115.

§ 448. **Repealing Conflicting Laws Not to Affect Pending Suits.**—That all laws and parts of laws in conflict with the provisions of this act are hereby repealed; but the amendments herein provided for shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

Section ten of the Act June 29, 1906.

Does not prevent the indictment if those violating the old law. United States v. Standard Oil Co., 148 Fed. 719, 155 Fed. 305. Reversed on other grounds. 164 Fed. 376, 90 C. C. A. 364; United States v. Chicago, St. P. & M. Ry. Co., same v. G. N. Ry. Co., 151 Fed. 84. Affirmed, same ruling. Great

N. Ry. Co. v. United States, 208 U. S. 452, 52 L. Ed. 567, 28 Sup. Ct. 313.

Applies to rebate cases and an indictment good under the Elkins law prior to its amendment remains good since. United States v. Delaware L. & W. R. Co., 152 Fed. 269; United States v. New York C. & H. R. R. Co., 153 Fed. 630; Great N. Ry. Co. v. United States, 155 Fed. 945, 84 C. C. A. 93. Affirmed. 208 U. S. 452, 52 L. Ed. 567, 28 Sup. Ct. 313; United States v. Great N. R. Co., 157 Fed. 288, 290.

§ 449. **Time of Taking Effect of Act.**—That this act shall take effect and be in force from and after its passage.

Joint resolution of June 30, 1906, provides: That the act entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all the acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission, shall take effect and be in force sixty days after its approval by the President of the United States."

Section eleven of the Act of June 29, 1906, and the joint resolution of June 30, 1906.

The effective date of the Act of June 29, 1906, was August 28, 1906. Nicola, Stone & Myers Co. v. L. & N. R. Co., 14 I. C. C. 199, 206.

Joint resolution ineffective to prevent law becoming in force on the date of its approval by the President. United States v. Standard Oil Co., 148 Fed. 719. Reversed on other grounds. Standard Oil Co. v. United States, 164 Fed. 376, 90 C. C. A. 364.

Section cited, Philips v. G. T. W. Ry. Co., 236 U. S. 662, 59 L. Ed. 774, 35 Sup. Ct. 444.

§ 450. **Carriers Must Designate Agents in Washington.**—It shall be the duty of every common carrier subject to the provisions of this act, within sixty days after the taking effect of this act, to designate in writing an agent in the city of Washington, District of Columbia, upon whom service of all notices and processes may be made for and on behalf of said common carrier in any proceeding or suit pending before the Interstate Commerce Commission or be-

fore said commerce court, and to file such designation in the office of the secretary of the Interstate Commerce Commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices and processes may be made upon such common carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the city of Washington, with like effect as if made personally upon such common carrier by leaving a copy thereof with such designated agent, service of any notice or other process in any proceeding before said Interstate Commerce Commission or commerce court may be made by posting such notice or process in the office of the secretary of the Interstate Commerce Commission.

New section added by amendment of June 18, 1910.

§ 451. **Pending Cases Not Affected.**—That nothing in this act contained shall undo or impair any proceedings heretofore taken by or before the Interstate Commerce Commission or any of the acts of said Commission; and in any cases, proceedings, or matters now pending before it, the Commission may exercise any of the powers hereby conferred upon it, as would be proper in cases, proceedings, or matters hereafter initiated and nothing in this act contained shall operate to release or affect any obligation, liability, penalty, or forfeiture heretofore existing against or incurred by any person, corporation or association.

Section 15 Act June 18, 1910.

§ 452. **Commission to Investigate Questions Pertaining to Issuance of Stocks and Bonds.**—That the President is hereby authorized to appoint a Commission to investigate questions pertaining to the issuance of stocks and bonds by railroad corporations, subject to the provisions of the act to regulate commerce, and the power of Congress to regulate or affect the same, and to fix the compensation of the members of such Commission. Said Commission shall be and is hereby authorized to employ experts to aid in the work of inquiry and examination, and such clerks, stenographers, and other assistants as may be necessary, which employees shall be paid

such compensation as the Commission may deem just and reasonable, upon a certificate to be issued by the chairman of the Commission. The several departments and bureaus of the Government shall detail from time to time such officials and employees and furnish such information to the Commission as may be directed by the President. For the purpose of its investigations the Commission shall be authorized to incur and have paid upon the certificate of its chairman such expenses as the Commission shall deem necessary: *Provided, however,* That the total expenses authorized or incurred under the provisions of this section for compensation, employees, or otherwise, shall not exceed the sum of twenty-five thousand dollars.

Section 16 of the Act of June 18, 1910.

§ 453. **Injunctions against Operation of State Statutes.**— That no interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a state "Or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such state," by restraining the action of any officer of such state in the enforcement or execution of such statute shall be issued or granted by any justice of the supreme court, or by any circuit court of the United States, or by any judge thereof, or by any district judge acting as circuit judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit judge, or to a district judge acting as circuit judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court of the United States or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court of the United States, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such judges shall be a justice of the Supreme Court of the United States or a circuit judge.

Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the Attorney-General of the state, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damages would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court of the United States, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall only remain in force until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken directly to the Supreme Court of the United States from the order granting or denying, after notice and hearing an interlocutory injunction in such case.

Section 266 of the Judicial Code, a new provision, being Sc. 17 of the Act of June 18, 1910. Ch. 309, 36 Stat. L. 557. Amended by Act March 4, 1913, Ch. 160, 37 Stat. 1013, which amendment added after the word "statute" in the first sentence of the section the words "Or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such state." The purpose of the statute stated. Chicago, B. & Q. R. Co. v. Oglesby, 198 Fed. 153. See Ex Parte Yung, 209 U. S. 123, 52 L. Ed. 714, 28 Sup. Ct. 441, 13 L. R. A. (N. S.) 932.

Held that the statute had no application to a city ordinance. Cumberland Tel. & Tel. Co. v. Memphis, 198 Fed. 955; Sperry-Hutchinson Co. v. Tacoma, 190 Fed. 682; Birmingham Water Works v. Birmingham, 211 Fed. 497; Calhoun v. City of Seattle, 215 Fed. 226. Nor to a tax levied under a special law. Lykins v. Chesapeake & O. Ry. Co, 209 Fed. 573, 126 C. C. A. 395.

When the statute does apply. Ex parte Metropolitan Water Co., 220 U. S. 539, 55 L. Ed. 575, 31 Sup. Ct. 600; Seaboard A. L. Ry. v. Railroad Commission of Ga., 213 Fed. 27; Louisville & N. R. Co. v. Garrett, 231 U. S. 298, 58 L. Ed. 229, 39 Sup. Ct. 48.

Cited as to right of appeal to Supreme Court. Rail & River Coal Co. v. Yaple, 214 Fed. 273, 276. Death of the state officer defendant abates an appeal. Pullman Co. v. Croom, 231 U. S. 571, 58 L. Ed. 375, 34 Sup. Ct. 182.

By Sec. 5 Act Jan. 28, 1915 Congress provided:

"No court of the United States shall have jurisdiction of any section or suit by or against any railroad company upon the ground that said railroad company was in operation under an act of Congress."

§ 454. **When Act Effective.**—That this act shall take effect and be in force from and after the expiration of sixty days after its passage, except as to sections twelve and sixteen, which sections shall take effect and be in force immediately.

Public, No. 41, approved February 4, 1887, as amended by Public, No. 25, approved March 2, 1889; Public, No. 72, approved February 10, 1891; Public, No. 38, approved February 8, 1895; Public, No. 337, approved June 29, 1906; Public Res., No. 47, approved June 30, 1906; Public No. 95 approved April 13, 1908; Public, No. 262, approved February 25, 1909; Public, No. 218, approved June 18, 1910; Public, No. 337, approved August 24, 1912; Public, No. 400 approved March 1, 1913; Public, No. 48, approved January 20, 1914; and Public, No. 161, approved August 1, 1914.

Section 18 of Act June 18, 1910.

§ 455. **Parties Defendant Other than Carriers in Suit to Enforce Provisions of Act.**—That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations,

orders and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

Section two of the original Act February 19, 1903 (Elkins Act).

In 1888 the Commission held that it was proper to make parties all carriers interested in a through rate, though the complaint was not defective if only the initial carrier was a party. Hurlburt v. Lake S. & M. S. R. Co., 2 I. C. C. 122, 2 I. C. R. 81.

§ 456. **Equitable Proceedings May Be Instituted by the Commission to Restrain Discrimination or Departure from Published Rates.**—That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petiton may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or state, it may be dealt with, inquired of, tried, and determined in either such judicial district or state, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs. and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct,

either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings and the proceedings provided for by this act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said act approved February fourth, eighteen hundred and eighty-seven, entitled "An act to regulate commerce and the acts amendatory thereof."

First part of section three of the Act February 19, 1903 (Elkins Act), as originally enacted.

Prior to this amendment suit could be maintained in the name of the United States to enjoin discrimination. United States v. Mo. Pac. R. Co., 65 Fed. 903, 5 I. C. R. 106. Affirmed by circuit court of appeals without written opinion. Reversed, holding that prior to Elkins Act such suit could not be maintained. Mo. Pac. R. Co. v. United States, 189 U. S. 274, 47 L. Ed. 811, 23 Sup. Ct. 507; United States v. Atchison, T. & S. F. Ry. Co., 142 Fed. 176, 185, 186. Prior to this Act a shipper could enjoin a discrimination prior to action by the Commission. Interstate Stock Yards v. Indianapolis U. Ry. Co., 99 Fed. 472, 483. Cited by Supreme Court. 192 U. S. 568, 570, 48 L. Ed. 565, 569, 24 Sup. Ct. 339. Under this Act violations occurring prior to its passage could be enjoined. United States v. Mich. Cent. R. Co., 122 Fed. 544. May enjoin giving rebates. United States v. Milwaukee Refrigerator T. Co., 145 Fed. 1007, 1010, citing Swift & Co. v. United States, 196 U. S. 375, 49 L. Ed. 518, 25 Sup. Ct. 276. Suit prosecuted under section. Armour Packing Co. v. United States, 209 U. S. 56, 52 L. Ed. 681, 28 Sup. Ct. 428. May enjoin giving transportation for advertising. United States v. Chicago, I. & L. R. Co., 163 Fed. 114.

§ 457. **Immunity and Compulsory Attendance of Witnesses, Production of Books and Papers.**—And in proceedings under this act and the acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and

the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in such proceeding.

Second part of section three of the Act February 19, 1903 (Elkins Act), as originally enacted.

§ 458. **Expediting Act Applicable to Suits Brought under Direction of Attorney-General.**—Provided, That the provisions of an act entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may hereafter be enacted, approved February eleventh nineteen hundred and three," shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission.

Last part of section three of the Act February 19, 1903 (Elkins Act), as originally enacted.

Cited, holding that proviso did not prevent an action by Commission to compel the production of papers. Int. Com. Com. v. Baird, 194 U. S. 25, 36, 48 L. Ed. 860, 865, 866, 24 Sup. Ct. 563.

See Expediting Act Sec. 468. *Post.*

§ 459. **Repealing Clause Not to Affect Pending Suits or Accrued Rights. When Act Takes Effect.**—That all acts and parts of acts in conflict with the provisions of this act are hereby repealed, but such repeal shall not affect causes now pending, nor rights which have already accrued, but such causes shall be prosecuted to a conclusion, and such rights

enforced in a manner heretofore provided by law and as modified by the provisions of this act.

This act shall take effect from its passage. Public, No. 103, approved February 19, 1903.

Section four and five of Act February 19, 1903 (Elkins Act), as originally enacted.

Section four did not save a suit prosecuted to a decree prior to the enactment of the Elkins Act. Mo. Pac. R. Co. v. United States, 189 U. S. 274, 47 L. Ed. 811, 23 Sup. Ct. 507. But prosecution for injunction against acts committed prior to the passage of the Elkins law could be maintained. United States v. Mich. Cent. R. Co, 122 Fed. 544.

§ 460. **Commerce Court.**—That a court of the United States is hereby created which shall be known as the commerce court and shall have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the act entitled "An act to further regulate commerce with foreign nations and among the states," approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

Nothing contained in this act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of

the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in such proceeding.

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Last part of section three of the Act February 19, 1903 (Elkins Act), as originally enacted.

Cited, holding that proviso did not prevent an action by Commission to compel the production of papers. Int. Com. Com. v. Baird, 194 U. S. 25, 36, 48 L. Ed. 860, 865, 866, 24 Sup. Ct. 563.

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enforced in a manner heretofore provided by law and as modified by the provisions of this act.

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§ 460. **Commerce Court.**—That a court of the United States is hereby created which shall be known as the commerce court and shall have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the act entitled "An act to further regulate commerce with foreign nations and among the states," approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

Nothing contained in this act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of

anywhere in the United States; and for expedition of the work of the court and the avoidance of undue expense or inconvenience to suitors the court shall hold sessions in different parts of the United States as may be found desirable. The actual and necessary expenses of the judges, clerk, marshal, deputy clerk, and deputy marshal of the court incurred for travel and attendance elsewhere than in the city of Washington shall be paid upon the written and itemized certificate of such judge, clerk, marshal, deputy clerk, or deputy marshal by the marshal of the court, and shall be allowed to him in the statement of his accounts with the United States.

The United States marshals of the several districts outside of the city of Washington in which the commerce court may hold its sessions shall provide, under the direction and with the approval of the Attorney-General of the United States, such rooms in the public buildings of the United States as may be necessary for the court's use; but in case proper room cannot be provided in such public buildings, said marshals, with the approval of the Attorney-General of the United States, may then lease from time to time other necessary rooms for the court.

If, at any time, the business of the commerce court does not require the services of all the judges, the Chief Justice of the United States may, by writing, signed by him and filed in the Department of Justice, terminate the assignment of any of the judges or temporarily assign him for service in any court or circuit court of appeals. In case of illness or other disability of any judge assigned to the commerce court the Chief Justice of the United States may assign any other circuit judge of the United States to act in his place, and may terminate such assignment when the exigence therefor shall cease; and any circuit judge so assigned to act in place of such judge shall, during his assignment, exercise all the powers and perform all the functions of such judge.

In all cases within its jurisdiction the commerce court, and each of the judges assigned thereto, shall, respectively, have and may exercise any and all of the powers of a circuit court of the United States and of the Judges of said court, respectively, so far as the same may be appropriate to

the effective exercise of the jurisdiction hereby conferred. The commerce court may issue all writs and process appropriate to the full exercise of its jurisdiction and powers and may prescribe the form thereof. It may also, from time to time, establish such rules and regulations concerning pleading, practice, or procedure in cases or matters within its jurisdiction as to the court shall seem wise and proper. Its orders, writs, and process may run, be served, and be returnable anywhere in the United States; and the marshal and deputy marshal of said court and also the United States marshals and deputy marshals in the several districts of the United States shall have like powers and be under like duties to act for and in behalf of said court as pertain to United States marshals and deputy marshals generally when acting under like conditions concerning suits or matters in the circuits of the United States.

The jurisdiction of the commerce court shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the commerce court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to

the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court; and may prescribe that the evidence be taken before a single judge of the court, with power to rule upon the admission of evidence. Except as may be otherwise provided in this act, or by rule of the court, the practice and procedure in the commerce court shall conform as nearly as may be to that in like cases in a circuit court of the United States.

The commerce court shall be opened for the transaction of business at a date to be fixed by order of the said court, which shall not be later than thirty days after the judges thereof shall have been designated.

Sec. 2. That a final judgment or decree of the commerce court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a circuit court of the United States to the Supreme Court, and the commerce court may direct the original record to be transmitted on appeal instead of a transcript thereof. The Supreme Court may affirm, reverse, or modify the final judgment or decree of the commerce court as the case may require.

Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the commerce court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require.

An appeal may also be taken to the Supreme Court of the United States from an interlocutory order or decree of the Commerce Court granting or continuing an injunction restraining the enforcement of an order of the Interstate Commerce Commission, provided such appeal be taken within thirty days from the entry of such order or decree.

Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in the court.

Sec. 3. That suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the commerce court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the commerce court, in its discretion, may restrain or suspend, in whole or in part, the operation of the Commission's order pending the final hearing and determination of the suit. No order or injunction so restraining or suspending an order of the Interstate Commerce Commission shall be made by the commerce court otherwise than upon notice and after hearing, except that in cases where irreparable damage would otherwise ensue to the petitioner, said court, or a judge thereof, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney-General, allow a temporary stay or suspension in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of such court or judge, pending application to the court for its order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judge making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until its decision upon the application.

Sec. 4. That all cases and proceedings in the commerce court which but for this act would be brought by or against the Interstate Commerce Commission shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the commerce court whenever, though it has not been made a party, public interests are involved.

Sec. 5. That the Attorney-General shall have charge and control of the interest of the Government in all cases and proceedings in the commerce court, and in the Supreme Court of the United States upon appeal from the commerce court; and if in his opinion the public interest requires it, he may

retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney-General shall stipulate with such special attorneys and counsel the amount of their compensation, which shall not be in excess of the sums appropriated therefor by Congress for such purposes, and shall have supervision of their action; *Provided,* That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice and speed the determination of such suits: *Provided, further,* That communities, associations, corporations firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by anyone under the terms of this act, or the acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof, and the Attorney-General shall not dispose of or discontinue said suit or proceeding over the objections of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or nonaction of the Attorney-General of the United States therein.

Complainants before the Interstate Commerce Commission interested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel under such regulations as are now permitted in

similar circumstances under the rules and practice of equity courts of the United States.

Sec. 6. That until the opening of the commerce court as in section one hereof provided, all cases and proceedings of which from that time the commerce court is hereby given exclusive jurisdiction may be brought in the same courts and conducted in like manner and with like effect as is now provided by law; and if any such case or proceeding shall have gone to final judgment or decree before the opening of the commerce court, appeal may be taken from such final judgment or decree in like manner and with like effect as is now provided by law. Any such case or proceeding within the jurisdiction of the commerce court which may have been begun in any other court as hereby allowed before the said date shall be forthwith transferred to the commerce court, if it has not yet proceeded to final judgment or decree in such other court unless it has been finally submitted for the decision of such court, in which case the cause shall proceed in such court to final judgment or decree and further proceeding thereafter, and appeal may be taken direct to the Supreme Court, and if remanded such cause may be sent back to the court from which the appeal was taken or to the commerce court for further proceeding as the Supreme Court shall direct; and all previous proceedings in such transferred case shall stand and operate notwithstanding the transfer, subject to the same control over them by the commerce court and to the same right of subsequent action in the case or proceeding as if the transferred case or proceeding had been originally begun in the commerce court. The clerk of the court from which any case or proceeding is so transferred to the commerce court shall transmit to and file in the commerce court the originals of all papers filed in such case or proceeding and a certified transcript of all record entries in the case or proceeding up to the time of transfer.

It shall be the duty of every common carrier subject to the provisions of this act, within sixty days after the taking effect of this act, to designate in writing an agent in the city of Washington, District of Columbia, upon whom service of all notices and processes may be made for and on behalf

of said common carrier in any proceeding or suit pending before the Interstate Commerce Commission or before said commerce court, and to file such designation in the office of the secretary of the Interstate Commerce Commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices and processes may be made upon such common carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the city of Washington, with like effect as if made personaly upon such common carier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Interstate Commerce Commission or commerce court may be made by posting such notice or process in the office of the secretary of the Interstate Commerce Commission.

While the commerce court has been abolished, the jurisdiction conferred thereon has been transferred to the district courts, which makes the statute creating the commerce court of interest. See also Judicial Code Sections 200 to 214 inclusive. For practice and procedure in the commerce court see Standard Encyclopoedia of Procedure, Vo. 5, p. 153, article by the author hereof. The commerce court had no jurisdiction when the Commission refused relief to a shipper. Hooker v. Knapp, 225 U. S. 302, 56 L. Ed. 1099, 32 Sup. Ct. 769. Right of commerce court to issue injunctions. Int. Com. Com. v. B. & O. R. R. Co., 225 U. S. 326, 56 L. Ed. 1107, 32 Sup. Ct. 742.

§ 461. **Commerce Court Abolished.**—The commerce court, created and established by the act entitled "An act to create a commerce court and to amend the act entitled 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes," approved June eighteenth, nineteen hundred and ten, is abolished from and after December thirty-first, nineteen hundred aand thirteen, and the jurisdiction vested in commerce court by said act is transferred to and vested in the several district courts of the United States, and all acts or parts of acts in so far as they relate to the establishment of the said commerce court are repealed. Nothing herein

contained shall be deemed to affect the tenure of any of the judges now acting as circuit judges by appointment under the terms of said act, but such judges shall continue to act under assignment, as in the said act provided, as judges of the district courts and circuit courts of appeals; and in the event of and on the death, resignation, or removal from office of any of such judges, his office is hereby abolished and no successor to him shall be appointed.

First paragraph of that section of the Appropriation Act which abolished the commerce court—Act approved Oct. 22, 1913. Known as District Court Jurisdiction Act. The succeeding four sections are taken from the same Act.

§ 462. **Venue of Suits on Order of Interstate Commerce Commission.**—The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the Commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed as meaning final destination of such shipment.

Second aragraph of Section of Act of October 22, 1913.

The former statute, being the first part of the 11th paragraph of Section 16, read:

The venue of suits brought in any of the circuit courts of the United States against the Commission to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office, and may be brought at any time

after such order is promulgated. And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office in the District of Columbia then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts.

First part of the eleventh paragraph of section sixteen.

Jurisdiction under the old law of suits by the Commission. Int. Com. Com. v. Tex. & Pac. Ry. Co., 57 Fed. 948, 6 C. C. A. 653, 20 U. S. App. 1, 4 I. C. R. 408; Int. Com. Com. v. So. Pac. Co., 74 Fed. 42.

Under the Hepburn law, Sanborn, Hook and Adams, Judges, announced this proposition:

"We refrain from expressing any opinion concerning what other jurisdiction, if any, is conferred upon this court by the broad and comprehensive language of the Hepburn Act, authorizing it to 'enjoin, set aside, annul or suspend any order or requirement of the Commission.' All we are required to hold, and all we do hold, is that this court has ample jurisdiction to set aside or suspend any order of the Commission resulting from a misconception and misapplication of a law to conceded or undisputed facts." Stickney v. Int. Com. Com., 164 Fed. 638, 644. Rules announced in a suit to set aside an order of the Commission. Judges Van Devanter, Hook and Adams. Mo., Kan. & Tex. R. Co. v. Int. Com. Com. 164 Fed. 645; C., R. I. & P. R. Co. v. Int. Com. Com. (Missouri River Rate case), 171 Fed. 680.

§ 463. **Procedure in the District Courts.**—The procedure in the district courts in respect to cases of which jurisdiction is conferred upon them by this act shall be the same as that heretofre prevailing in the commerce court. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States; and the right of appeal from the district courts in such cases shall be the same as the right of appeal theretofore prevailing under existing law from the commerce courts. No interlocutory injunction suspending or restraining the

enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney-General of the United States, and to such other persons as may be defendants in the suit.

First part of third paragraph of the Section of Act of Oct. 22, 1913. What force shall be given by the courts to orders of the Commission is a question discussed in Sec. 309 *ante* See also Int. Com. Com. v. Chicago, R. I. & P. R. Co., 218 U. S. 88, 54 L. Ed. 946, 30 Sup. Ct. 651; Int. Com. Com. v. Chicago, B. & Q. R. Co., 218 U. S. 113, 54 L. Ed. 959, 30 Sup. Ct. 660; Int. Com. Com. v. Delaware, L. & W. R. Co., 220 U. S. 235, 55 L. Ed. 448, 31 Sup. Ct. 392; Int. Com. Com. v. Union P. R. Co., 222 U. S. 541, 56 L. Ed. 308, 32 Sup. Ct. 108; Int. Com. Com. v. Northern P. R. Co., 216 U. S. 538, 54 L. Ed. 608, 30 Sup. Ct. 417; Int. Com. Com. v. Louisville & N. R. Co., 227 U. S. 88, 57 L. Ed. 431, 33 Sup. Ct. 185. See also sections 298, 298a, 308, 308a and 308b, *supra.*

The Commission must grant a hearing which must be both adequate and fair, and the conclusions must not be contrary "to the indisputable character of the evidence." Int. Com. Com. v. L. & N. R. Co., 227 U. S. 88, *supra,* citing cases.

§ 464. **Temporary Restraining Orders.**—*Provided,* That in cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney-

General, allow a temporary stay or supension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of the said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding based upon evidence submitted to the judges making the order and indentified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for.

Second part third paragraph of Section 4 of Act Oct. 22, 1913.

§ 465. **An Appeal to the Supreme Court from Interlocutory Orders.**—An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply.

Third part of paragraph 3 of the Section of Act Oct. 22, 1913.

The provision of the former law proviso to paragraph 12 of Section 16 of the Act to Regulate Commerce read:
Provided, That no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only

to the Supreme Court of the Usited States: Provided further, That the appeal must be taken within thirty days from the entry of such order or decree and it shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes.

Proviso of paragraph twelve of section sixteen.

Preliminary injunction denied. Delaware, L. & W. R. Co. v. Int. Com. Com., 155 Fed. 512; So. Pac. Ter. Co. v. Int. Com. Com., 166 Fed. 134. Preliminary injunction ganted. Delaware, L. & W. R. Co. v. Int. Com. Com., 166 Fed. 498; Delaware, L. & W. R. Co. v. Int. Com. Com., 166 Fed. 499. In the last named case, under the peculiar facts and at the request of the Commission, shipper allowed to intervene. 169 Fed. 894. See Missouri River Rate case (C. R. I. & P. R. Co. v. Int. Com. Com.), 171 Fed. 680.

Amended section cited as a reason why temporary restraining orders might with propriety be granted where danger of irreparable injury exists. Louisville & N. R. Co. v. U. S.. 238 U. S. 1, 59 L. Ed. 1177, 35 Sup. Ct. 696.

§ 466. **Appeals from Final Judgments.**—A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such case the notice required shall be served upon the defendants in the case and upon the Attorney-General of the state.

Fourth part of Paragraph 3 of Section of Act Oct. 22, 1913.

The provision of the former law, paragraph 11 of Section 16 of Act to Regulate Commerce read:

From any action upon such petition an appeal shall lie by either party to the Supreme Court of the United States, and in such court the case shall have priority in hearing and determination over all other cases except criminal cases, but such appeal shall not vacate or suspend the order appealed from.

§ 467. **Pending Causes Transferred to District Courts.**—All cases pending in the commerce court at the date of the passage of this act shall be deemed pending in and be transferred forthwith to said district courts except cases which may previously have been submitted to that court for final decree and the latter to be transferred to the district courts if not decided by the commerce court before December first, nineteen hundred and thirteen, and all cases wherein injunctions or other orders or decrees, mandatory or otherwise, have been directed or entered prior to the abolition of the said court shall be transferred forthwith to said district courts, which shall have jurisdiction to proceed therewith and to enforce said injunctions, orders, or decrees. Each of said cases and all the records, papers, and proceedings shall be transferred to the district court wherein it might have been filed at the time it was filed in the commerce court if this act had been in effect; and if it might have been filed in any one of two or more district courts it shall be transferred to that one of said district courts which may be designated by the petitioner or petitioners in said case, or, upon failure of said petitioners to act in the premises within thirty days after the passage of this act, to such one of said district courts as may be designated by the judges of the commerce court. The judges of the commerce court shall have authority, and are hereby directed, to make any and all orders and to take any other action necessary to transfer as aforesaid the cases and all the records, papers, and proceedings then pending in the commerce court to said district courts. All adminstrative books, dockets, files, and alll papers of the commerce court not transferred as part of the record of any particular case shall be lodged in the Department of Justice. All furniture, carpets, and other property of the commerce court is turned over to the Department of Justice and the Attorney-General is authorized to supply such portion thereof as in his judgment may be proper and necessary to the United States Board of Medition and Conciliation.

Any case hereafter remanded from the Supreme Court which, but for the passage of this act, would have been re-

manded to the commerce court, shall be remanded to a district court, designated by the Supreme Court, wherein it might have been instituted at the time it was instituted in the commerce court if this act had then been in effect, and thereafter such district court shall take all necessary and proper proceedings in such case in accordance with law and such mandate, order or decree therein as may be made by said Supreme Court. All laws or parts of laws inconsistent with the foregoing provisions relating to the Commerce Court, are repealed.

§ 468. **Certain Cases Given Precedence and Hearing Expedited. Hearing before Three Judges.**—That in any suit in equity pending or hereafter brought in any circuit court of the United States under the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said court, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select; or, in case the full court shall not at any time be made up by reason of the necessary absence or disqualification of one or more of the said circuit judges, the justice of the Supreme Court assigned to that circuit or the other circuit judge or judges may designate a district judge or judges within the circuit who shall be competent to sit in said court at the hearing of said suit. In the event the judges sitting in such case shall be equally divided in opinion as to the decision or disposition of said cause, or in the event that a majority of said judges shall be unable to agree upon the judgment,

order, or decree finally disposing of said case in said court which should be entered in said cause, then they shall immediately certify that fact to the Chief Justice of the United States, who shall at once designate and appoint some circuit judge to sit with said judges and to assist in determining said cause. Such order of the Chief Justice shall be immediately transmitted to the Clerk of the circuit court in which said cause is pending and shall be entered upon the minutes of said court. Thereupon said cause shall at once be set down for reargument and the parties thereto, notified in writing by the clerk of said court of the action of the court and the date fixed for the reargument thereof. The provision of this section shall apply to all causes and proceedings in all courts now pending, or which may hereafter be brought.

Section 1 of Act Feb. 11, 1903, known as the Expediting Act as amended by the Act of June 25, 1910. The second part of paragraph 12 of Sec. 16 of the Act to Regulate Commerce as amended by the Act of 1906 read:

The provisions of "An act to expedite the hearing and determination of suits in equity, and so forth," approved February eleventh, nineteen hundred and three, shall be, and are hereby, made applicable to all such suits, including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the Commission, or any of the provisions of the act to regulate commerce approved February fourth, eighteen hundred and eighty seven, and all acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney-General in every such case to file the certificate provided for in said expediting act of February eleventh, nineteen hundred and three, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes.

Second part of paragraph twelve of section sixteen.

When two of the three circuit judges agree case will not be certified to the Supreme Court. So. Pac. Ter. Co. v. Int. Com. Com., 166 Fed. 134,

In So. Pac. Ter. Co. v. Int. Com. Com., 166 Fed. 134, the section being under discussion, the court of appeals for the Fifth Circuit, Pardee, Judge, delivering the opinion, said:

"This expediting act, fairly construed, permits the case to proceed (except it is to be given precedence and expedited) until final hearing when it is to be set down before three circuit judges. After final decree it may be carried within 60 days by appeal to the Supreme Court by either party, and the only office left for the certificate is in the contingency that the judges shall be unable to agree on a final decree.

"We can find nothing further in the acts requiring three circuit judges to sit in any other phases of the case than the hearing on application for a preliminary injunction and on the final hearing. To apply it to all proceedings in the case is, in the nature of things to defeat the very object of the act, and change it from an expediting act into a hindering and delaying act."

§ 469. **Direct Appeal to Supreme Court.**—That every suit in equity pending or hereafter brought in any circuit court of the United States under any of said acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: Provided, That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law.

Public No. 82, approved February 11, 1903.

Section two of the Expediting Act, Act February 11, 1893.

A direct appeal to the Supreme Court is authorized by this section from a final decree in the circuit court in a proceeding to compel the production of testimony. Int. Com. Com. v. Baird, 194 U. S. 25, 48 L. Ed. 860, 24 Sup. Ct. 563. Appeal taken from the circuit court to the Supreme Court from an order granting a preliminary injunction under the Sherman Anti-Trust Act. Swift & Co. v. United States, 196 U. S. 375,

49 L. Ed. 518, 25 Sup. Ct. 276; Circuit court decree, United States v. Swift & Co.. 122 Fed. 529.

By Section 289 of the Judicial Code circuit courts of the United States are abolished and district courts should be read where circuit courts appear in the section relating to courts.

§ 470. **Government Aided Railroad and Telegraph Lines.**—That all railroad and telegraph companies to which the United States has granted any subsidy in lands or bonds or loan of credit for the construction of either railroad or telegraph lines, which, by the acts incorporating them, or by any acts amendatory or supplementary thereto, are required to construct, maintain, or operate telegraph lines, and all companies engaged in operating said railroad or telegraph lines shall forthwith and henceforward, by and through their own respective corporate officers and employees, maintain and operate, for railroad, governmental, commercial, and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants as aforesaid.

Section 1, Act of Aug. 7, 1888 amending Act of July 1st, 1862.

Statute constitutional. Essex v. New England Teleg. Co., 239 U. S. 313, 60 L. Ed. 301, 36 Sup. Ct.102.

§ 471. **Connecting Telegraph Lines.**—That whenever any telegraph company which shall have accepted the provisions of title sixty-five of the Revised Statutes shall extend its line to any station or office of a telegraph line belonging to anyone of said railroad or telegraph companies, referred to in the first section of this act, said telegraph company so extending its line shall have the right and said railroad or telegraph company shall allow the line of said telegraph company so extending its line to connect with the telegraph line of said railroad or telegraph company to which it is extending at the place where their lines may meet, for the prompt and convenient interchange of telegraph business between said companies; and such railroad and telegraph

companies, referred to in the first section of this act, shall so operate their respective telegraph lines as to afford equal facilities to all, without discrimination in favor of or against any person, company, or corporation whatever, and shall receive, deliver, and exchange business with connecting telegraph lines on equal terms, and affording equal facilities, and without discrimination for or against any one of such connecting lines; and such exchange of business shall be on terms just and equitable

Section 2 of Act of August 7, 1888 amending Act of July 1, 1862.

§ 472. **Duties Imposed on Interstate Commerce Commission.** —That if any such railroad or telegraph company referred to in the first section of this act or company operating such railroad or telegraph line shall refuse or fail, in whole or in part, to maintain and operate a telegraph line as provided in this act and acts to which this is supplementary, for the use of the Government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then any person, company, corporation, or connecting telegraph company may apply for relief to the Interstate Commerce Commission, whose duty it shall thereupon be, under such rules and regulations as said Commission may prescribe, to ascertain the facts, and determine and order what arrangement is proper to be made in the particular case, and the railroad or telegraph company concerned shall abide by and perform such order; and it shall be the duty of the Interstate Commerce Commission, when such determination and order are made, to notify the parties concerned, and, if necessary, enforce the same by writ of mandamus in the courts of the United States, in the name of the United States, at the relation of either of said Interstate Commerce Commissioners: *Provided,* That the said Commissioners may institute any inquiry, upon their own motion, in the same manner and to the same effect as though complaint had been made.

Section 3 of the Act of Aug. 7, 1888 amending the Act of July 1, 1862.

§ 473. **Duty of the Attorney-General.**—That in order to secure and preserve to the United States the full value and benefit of its liens upon all the telegraph lines required to be constructed by and lawfully belonging to said railroad and telegraph companies referred to in the first section of this act, and to have the same possessed, used, and operated in comformity with the provisions of this act and of the several acts to which this act is supplementary, it is hereby made the duty of the Attorney-General of the United States, by proper proceedings, to prevent any unlawful interference with the rights and equities of the United States under this act, and under the acts hereinbefore mentioned, and under all acts of Congress relating to such railroads and telegraph lines, and to have legally ascrtained and finally adjudicated all alleged rights of all persons and corporations whatever claiming in any manner any control or interest of any kind in any telegraph lines or property, or exclusive rights of way upon the lands of such railroad companies, or any of them, and to have all contracts and provisions of contracts set aside and annulled which have been unlawfully and beyond their powers entered into by said railroad or telegraph companies, or any of them, with any other person, company, or corporation.

Section 4 of the Act of Aug. 7, 1888. Amending the Act of July 1, 1862.

§ 474. **Penalties Provided.**—That any officer or agent of said railroad or telegraph companies, or of any company operating the railroads and telegraph lines of said companies, who shall refuse or fail to operate the telegraph lines of said railroad or telegraph companies under his control, or which he is engaged in operating, in the manner directed in this act and by the acts to which it is supplementary, or who shall refuse or fail, in such operation and use, to afford and secure to the government and the public equal facilities, or to secure to each of said connecting telegraph lines equal advantages and facilities in the interchange of business, as

herein provided for, without any discrimination whatever for or adverse to the telegraph line of any or either of said connecting companies, or shall refuse to abide by, or perform and carry out within a reasonable time the order or orders of the Interstate Commerce Commission, shall in every such case of refusal or failure be guilty of a misdemeanor, and, on conviction thereof, shall in every such case be fined in a sum not exceeding one thousand dollars, and may be imprisoned not less than six months; and in every such case of refusal or failure the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted under the provisions of this section, but may also bring an action for the damages sustained thereby against the company whose officer or agent may be guilty thereof, in the circuit or district court of the United States in any State or Territory in which any portion of the road or telegraph line of said company may be situated; and in case of suit process may be served upon any agent of the company found in such State or Territory. and such service shall be held by the court good and sufficient.

Section 5 of the Act of Aug. 7, 1888 amending the Act of July 1, 1862.

§ 475. **Duty of Telegraph and Raiload Companies to File Contracts with and Make Reports to Interstate Commerce Commission.**—That it shall be the duty of each and every one of the aforesaid railroad and telegraph companies, within sixty days from and after the passage of this act, to file with the Interstate Commerce Commission copies of all contracts and agreements of every description existing between it and every other person or corporation whatsoever in reference to the ownership, possession, maintenance, control, use or operation of any telegraph lines, or property over or upon its rights of way, and also a report describing with sufficient certainty the telegraph lines and property belonging to it, and the manner in which the same are being then used and operated by it, and the telegraph lines and property upon its right of way in which any other person or corporation claims to have a title or interest, and setting forth the grounds of such claim, and the manner in which the same are being then

used and operated; and it shall be the duty of each and every one of said railroad and telegraph companies annually hereafter to report to the Interstate Commerce Commission, with reasonable fullness and certainty, the nature, extent, value, and condition of the telegraph lines and property then belonging to it, the gross earnings, and all expenses of maintenance, use, and operation thereof, and its relation and business with all connecting telegraph companies during the preceding year, at such time and in such manner as may be required by a system of reports which said Commission shall prescribe; and if any of said railroad or telegraph companies shall refuse or fail to make such reports or any report as may be called for by said Commission or refuse to submit its books and records for inspection, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand dollars nor more than five thousand dollars, to be recovered by the Attorney-General of the United States, in the name and for the use and benefit of the United States; and it shall be the duty of the Interstate Commerce Commission to inform the Attorney-General of all such cases of neglect or refusal, whose duty it shall be to proceed at once to judicially enforce the forfeitures herein before provided.

Section 6 of the Act of Aug. 7, 1888 amending the Act of July 1, 1862.

§ 476. **Right of Congress to Alter or Annul This Act.**—That nothing in this act shall be construed to affect or impair the right of Congress, at any time hereafter, to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal as, in the opinion of Congress justice or the public welfare may require; and nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in the United States, or any authority that the Postmaster General now has under title sixty-five of the Revised Statutes to fix rates, or, of the Government, to purchase lines as provided under said title, or to have its messages given precedence in transmission.

Public, No. 237, approved August 7, 1888.

Section 7 of the Act of Aug. 7, 1888 amending the Act of July 1, 1862.

The Act of July 1, 1862, 12 Stat. 489, chap. 120, Sec. 6, cited as to right of government to fair and reasonable rates. So. Pac. Co. v. U. S., 237 U. S. 202, 59 L. Ed. 916, 35 Sup. Ct. 573.

§ 477. **Lake Erie & Ohio River Ship Canal.**—Sec. 17. That the said canals shall be open to the use and navigation of all suitable and proper vessels or other water craft, by whomsoever owned or operated, upon fair and equal terms, conditions, rates, tolls, and charges; and the said company may demand, take, and recover for its own proper use, for all persons and things of whatsoever description transported upon the said canals, feeders, and other works, or in vessels and crafts using the same, just and reasonable charges, rates, and tolls; but all such charges, rates, and tolls shall be equal to all persons, vessels, and goods under certain classifications to be established by the company and approved by the Interstate Commerce Commission; and no rebate, reduction, drawback, or discrimination of any sort on such charges, rates, and tolls shall ever be made directly or indirectly. And the said charges, rates, and tolls for the ensuing year shall be fixed, published, and posted on or in every place where they are to be collected, on or before the fifteenth day of February of each year, and shall not be changed except after thirty days' public notice, which notice shall plainly state the changes proposed to be made in the charges, rates, and tolls then in force and the time when the changed charges, rates and tolls will go into effect; and the proposed changes shall be shown printing new schedules or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: *Provided,* That the Interstate Commerce Commission may, in its discretion and for good cause shown, allow changes upon less notice than herein specified or modify the foregoing requirements in respect to publishing and posting of such schedules, either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

Public, No. 402, approved June 30, 1906.

§ 478. **Parcel Post.**—The classification of articles mailable as well as the weight limit, the rates of postage, zone or zones and other conditions of mailability under this act, if the Postmaster-General shall find on experience that they or any of them are such as to prevent the shipment of articles desirable, or to permanently render the cost of the service greater than the receipts of the revenue therefrom, he is hereby authorized, subject to the consent of the Interstate Commerce Commission after investigation, to reform from time to time such classification, weight limit, rates, zone or zones or conditions, or either, in order to promote the service to the public or to insure the receipt of revenue from such service adequate to pay the cost thereof.

An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes.

Public, No. 336, approved August 24, 1912.

§ 479. **Compulsory Attendance of Witnesses and Production of Papers Provided for.**—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpœna of the Commission, whether such subpœna be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty for forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpœna, or the subpœna of either of them, or in any case such case or proceeding: Provided,

That no person so testifying shall be exempt from prosecution punishment for perjury committed in so testifying.

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents, if in his power to do so, in obedience to the subpœna or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment.

Act of February 11, 1893.

§ 480. **Amendment to Act Making Compulsory Attendance of Witnesses and Production of Papers.**—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That under the immunity provisions in the act entitled "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, in section six of the act entitled "An act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and in the act entitled "An act to further regulate commerce with foreign nations and among the states," approved February nineteenth, nineteen hundred and three, and in the act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-fifth, nineteen hundred nad three, immunity shall extend only to a natural person who, in obedience to a subpœna, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

Public No. 389, approved June 30, 1906.

Act June 30, 1906.

§ 480a. **Policy of Congress to Encourage Water Transportation.**—It is hereby declared to be the policy of Congress

to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation.

It shall be the duty of the Secretary of War, with the object of promoting, encouraging, and developing inland waterway transportation facilities in connection with the commerce of the United States, to investigate the appropriate types of boats suitable for different classes of such waterways; to investigate the subject of water terminals, both for inland waterway traffic and for through traffic by water and rail, including the necessary docks, warehouses, apparatus, equipment, and appliances in connection therewith, and also railroad spurs and switches connecting with such terminals, with a view to devising the types most appropriate for different locations, and for the more expeditious and economical transfer or interchange of passengers or property between carriers by water and carriers by rail; to advise with communities, cities, and towns regarding the appropriate location of such terminals, and to cooperate with them in the preparation of plans for suitable terminal facilities; to investigate the existing status of water transportation upon the different inland waterways of the country, with a view to determining whether such waterways are being utilized to the extent of their capacity, and to what extent they are meeting the demands of traffic, and whether the water carriers utilizing such waterways are interchanging traffic with the railroads; and to investigate any other matter that may tend to promote and encourage inland water transportation. It shall also be the province and duty of the Secretary of War to compile, publish, and distribute, from time to time, such useful statistics, data, and information concerning transportation on inland waterways as he may deem to be of value to the commercial interests of the country

The words "inland waterway" as used in this section shall be construed to include the Great Lakes.

Section 500 Title V., Transportation Act 1920.

§ 480b. **Effective Date Section Ten Clayton Act Extended.** —The effective date on and after which the provisions of

section 10 of the Act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, shall become and be effective is hereby deferred and extended to January 1, 1921; Provided, That such extension shall not apply in the case of any corporation organized after January 12, 1918.

Section 501, Transportation Act 1920. See section 504, *post*.

§ 480c. **Part of Act Unconstitutional Not Void Other Parts.**—That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid such judgment shall not affect, impair, or invalidate the remainder of the Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered.

Section 502, Transportation Act 1920. By a long line of decisions the Supreme Court had adopted as a settled principle: Where a particular provision of a statute is held unconstitutional and where such provision is so connected with the general law that clearly the legislature never meant to enact only what remains, the whole act is invalid. Where the unconstitutional part is independent of the general statute, the general provisions may stand notwithstanding the unconstitutional provision. The leading cases are: Allen v. Louisiana, 103 U. S. 80, 26 L. Ed. 318; Bank of Hamilton v. Dudley, 2 Pet. 492, 7 L. Ed. 496; Knott v. C. B. & Q. R. Co., 230 U. S. 474, 57 L. Ed. 1571, 33 Sup. Ct. 975; New York C. & H. R. Co. v. United States, 212 U. S. 481, 53 L. Ed. 613, 29 Sup. Ct. 304. This section has as its purpose to avoid the rule that an unconstitutional-connected clause makes invalid the clauses dependent thereon. It is very doubtful if the section means anything; and, it is believed, that the long established rules of construction will be followed notwithstanding this section.

480d. **Federal Control.**—First by proclamation and later under the Act of March 21, 1918 the United States assumed the control and operation of the railroads of continental United States. This statute gave the Director General of Railroads,

appointed by the President, extensive powers but it did not wholly suspend the authority of the Commission over rates. Willamette Valley Lumbermans Asso. v. S. P. Co., 51 I. C. C. 250.

One of the principal effects of orders issued by the Director General was to create confusion as to where and against whom suits could be brought for causes of action arising out of Federal Control. On this question the courts have differed widely. The question is discussed in Central Law Journal, Vol. 87, No. 24, 42, Vol. 88, pp. 100, 157; Vol. 90, p. 245, Annotations, 4 A. L. R. 1680.

Intrastate rates could not be regulated by the States during Federal Control. Northern P. Ry. Co. v. North Dakota, 250 U. S. 135, 63 L. Ed. 897, 39 Sup. Ct. 502, P. U. R. 1919D, 700, and other cases cited. Annotations to section 335, *supra*.

The statutes and proclamations inaugurating and terminating Federal Control are shown in Appendix 1, *post*.

## CHAPTER X.

### ACTS RELATING TO THE TRANSPORTATION OF ANIMALS.

Act to prevent cruelty to animals while in interstate transit, known as the 28-hour law, Act June 29, 1906, Chapter 3594, 34 Stat. L. 607, U. S. Comp. St. Supp. 1907, p. 918, Fed. Stat. Ann. Sup. 1907, p. 25.

Act March 4, 1907, Chapter 2907, 34 Stat. L. 1260 et seq., requiring inspection of meat.

Act March 3, 1905, 33 Stat. L. 1264, Ch. 1496, U. S. Comp. St. Supp. 1909, p. 1185, relating to transportation of animals from quarantine territory.

§ 481. Time Prescribed for Feeding and Unloading Animals in Transit.
482. Feeding Shall Be at Expense of Owner, Lien Given for Food.
483. Penalty.
484. Meat Inspection Act.
485. Transportation of Animals from Quarantine Territory.

§ 481. **Time Prescribed for Feeding and Unloading Animals in Transit.**—That no railroad, express company, car company, common carrier other than by water, or the receiver, trustee, or lessee of any of them, whose road forms any part of a line of road over which cattle, sheep, swine, or other animals shall be conveyed from one state or territory or the District of Columbia into or through another state or territory or the District of Columbia, or the owners or masters of steam, sailing, or other vessels carrying or transporting cattle, sheep, swine, or other animals from one state or territory or the District of Columbia into or through another state or territory or the District of Columbia, shall confine the same in cars, boats or vessels of any description for a period longer than twenty-eight consecutive hours without unloading the same in a humane manner, into properly equipped pens for rest, water, and feeding, for a period of at least five consecutive hours, unless prevented by storm or by other accidental or unavoidable causes which cannot be anticipated or avoided by the exercise of due diligence and foresight: Provided, That upon the written request of the owner or person in custody of that particular shipment, which written request shall be separate and apart from any printed bill of lading,

or other railroad form, the time of confinement may be extended to thirty-six hours. In estimating such confinement, the time consumed in loading and unloading shall not be considered, but the time during which the animals have been confined without such rest or food or water on connecting roads shall be included, it being the intent of this act to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon the contingencies hereinbefore stated: *Provided,* That it shall not be required that sheep be unloaded in the nighttime, but where the time expires in nighttime in case of sheep the same may continue in transit to a suitable place for unloading, subject to the aforesaid limitation of thirty-six hours.

Section one of the act.

The Act of March 3, 1873, 17 Stat. L. 584, R. S. U. §§ 4386 to 4390, inclusive, had the same purpose, though was somewhat less comprehensive than the present law.

The old law, and for that matter the present law, did not apply to transportation wholly within a state. United States v. East Tenn., Va. & Ga. R. Co., 13 Fed. 642. The statute constitutional. United States v. Boston & A. R. Co., 15 Fed. 209. Reason for the law stated. United States v. L. & N. R. Co., 18 Fed. 480. Accident to a train due to negligence of the carrier not excuse, the present law is different in this respect, but the decision would probably apply to the law now. Newport N. & M. V. R. Co. v. United States, 61 Fed. 488, 9 C. C. A. 579. The same rule was applied United States v. So. Pac. Co., 157 Fed. 459; followed holding that proof need only be by a preponderance of the evidence, same style case, 162 Fed. 412. Opposite rule adopted United States v. Louisville & N. R. Co., 157 Fed. 979. The rule that action civil affirmed. Montana C. Ry. Co. v. United States, 164 Fed. 400, 90 C. C. A. 388. Under the old law a receiver was not liable, he is expressly named in the present law. United States v. Harris, 85 Fed. 533. Affirmed, same style case, 177 U. S. 305, 44 L. Ed. 780, 20 Sup. Ct. 609. A complaint for penalties must charge that the neglect was wilful, though need not negative exceptions. Action civil not criminal. United States v. Oregon Short L. R. Co., 160 Fed. 526. "Knowingly and wilfully" defined. Terminal railroad within act. United

States v. Sioux City Stock Yards Co., 162 Fed. 556. Affirmed without discussing questions involved, same style case, 167 Fed. 126. Act constitutional. United States v. Oregon R. & Nav. Co., 163 Fed. 640. Objections to allegation must be taken before verdict; action civil; wilful does not mean an evil intent but a violation purposely. New York C. & H. R. R. Co. v. United States, 165 Fed. 833, 91 C. C. A. 519.

"Knowingly and wilfully" defined. United States v. Union Pacific R. Co., 169 Fed. 65, 94 C. C. A. 433; St. Louis & S. F. Ry. Co. v. United States, 169 Fed. 69, 94 C. C. A. 437; Wisconsin Cent. Ry. Co. v. United States, 169 Fed. 76, 94 C. C. A. 444.

**Notes of Decisions Rendered Since 1909.**

Not a criminal statute subject to the strict rules of construction applied in criminal prosecutions. Montana C. Ry. Co. v. U. S., 164 Fed. 400, 90 C. C. A. 388. No defense that animals detained beyond the statutory limit because of "oversight, forgetfulness and unintentional neglect" of an employee.

Provisions relating to sheep not fatally defective for uncertainty. So. Pac. Co. v. U. S., 171 Fed. 360, 96 C. C. A. 252. Owner's request to extend period to 36 hours must be written and for each shipment, "contingencies hereinbefore steated" defined. U. S. v. Pere Marquette R. Co., 171 Fed. 586. No particular kind of equipment prescribed. U. S. v. St. Louis, I. M. & S. Ry. Co., 177 Fed. 205, 101 C. C. A. 365. Application for extension may be printed or stamped, made before the transportation commences, and may be made by an agent and on a form furnished by the carrier. Wabash R. Co. v. U. S., 178 Fed. 5, 101 C. C. A. 133; Atchison, T. & S. F. Ry. Co. v. U. S., 178 Fed. 12, 101 C. C. A. 140; Missouri, K. & T. Ry. Co. v. U. S., 178 Fed. 15, 101 C. C. A. 143. A terminal company receiving horses which have been kept confined for more than 28 hours and delivering them for a short distance did not violate the statute. Northern Pac. T. Co. v. U. S., 184 Fed. 603, 106 C. C. A. 583; U. S. v. Chicago J. Ry. Co., 211 Fed. 724. Sheep may not be detained more than 36 hours in any case. U. S. v. Atchison, T. & S. F. Ry. Co., 185 Fed. 105, 107 C. C. A. 323. Terminal stock yards railroad sub-

ject to provision of act. St. Joseph Stock Yards Co. v. U. S., 187 Fed. 104, 110 C. C. A. 432; See note 110 C. C. A. 435. The statute applies when the shipment passes through a foreign country. Lehigh Valley R. Co. v. U. S., 187 Fed. 1006, 109 C. C. A. 211, affirming U. S. v. Lehigh V. R. Co., 184 Fed. 971. Not sufficient to show that food, rest, etc., could have been had; must show that they were furnished. Chicago, B. & Q. R. Co. v. U. S., 195 Fed. 241, 115 C. C. A. 193, affirming U. S. v. C. B. & Q. R. Co., 184 Fed. 984. That there is room to enable the cattle to lie down does not except the movement from the provision of the statute. Erie R. Co. v. U. S., 200 Fed. 406, affirming U. S. v. Erie R. Co., 191 Fed. 941. No willful violation. U. S. v. Chicago, R. I. & P. Ry. Co., 211 Fed. 770. Initial carrier liable here for acts of its agent the terminal carrier. U. S. v. Union Pac. R. Co., 213 Fed. 332, 130 C. C. A. 34. The responsibility of the carrier continues until delivery is completed. U. S. v. Philadelphia & R. Ry. Co., 223 Fed. 202, 206, 207.

**Notes of Decisions Rendered Since 1915.**

Reasonableness of charges for feeding, watering and resting animals not within the jurisdiction of the Commission. Streever Lumber Co. v. C. M. & St. P. Ry. Co., 34 I. C. C. 1. Pacific Coast Beef & Provision Co. v. O. S. R. Co., 46 I. C. C. 401. Delay of movement while in the United States although origin and destination in Canada, subject to the statute. Grand Trunk Ry. Co. v. United States, 229 Fed. 116, 143 C. C. A. 392, Ann. Cas. 1917B 1094. Grand Trunk Ry. Co. v. United States, 248 Fed. 905, 161 C. C. A. —, and cases there cited. Not only must the animals be unloaded, rested and fed, but "in properly equipped pens." Southern Pacific Co. v. Stewart, 233 Fed. 956, 147 C. C. A. 630. Where the offense is already completed, the carrier thereafter receiving the animals is not guilty. United States v. C. M. & St. P. Ry. Co., 234 Fed. 386. But otherwise when the delivering carrier had kept the animals 34 hours. United States v. Sioux City Terminal Co., 234 Fed. 663. And see United States v. C. M. & St. P. Ry. Co., 250 Fed. 442. Must be "knowingly and wilfully." United States v. C. M. & St.

P. Ry. Co., 245 Fed. 179. Philadelphia & R. Co. v. United States, 247 Fed. 466, 159 C. C. A. 520. United States v. Philadelphia & R. Co., 247 Fed. 469, 159 C. C. A. 523. The charge of the lower court to restriction, due diligence defined. Chicago & N. W. Ry. Co. v. United States, 246 U. S. 512, 62 L. Ed. 859, 38 Sup. Ct. 351, 234 Fed. 268, 148 C. C. A. 170. Duty of carrier when shipper feeds, notice of claim for loss and damage, Federal question. Snyder v. King, — Mich. —, 165 N. W. 840, 1 A. L. R. 893.

§ 482. **Feeding Shall Be at Expense of Owner, Lien Given for Food.**—That animals so unloaded shall be properly fed and watered during such rest, either by the owner or person having the custody thereof, or, in case of his default in so doing, then by the railroad, express company, car company, common carrier other than by water, or the receiver, trustee, or lessee of any of them, or by the owners or masters of boats or vessels transporting the same, at the reasonable expense of the owner or person in custody thereof, and such railroad, express company, car company, common carrier other than by water, receiver, trustee, or lessee of any of them, owners or masters, shall in such case have a lien upon such animals for food, care and custody furnished, collectible at their destination in the same manner as the transportation charges are collected, and shall not be liable for any detention of such animals, when such detention is of reasonable duration, to enable compliance with section one of this act; but nothing in this section shall be construed to prevent the owner or shipper of animals from furnishing food therefor, if he so desires.

Section two of the Act.

**Notes of Decisions Rendered Since 1915.**

Food allowance prescribed by Department of Agriculture. Penn. R. Co. v. Swift & Co., 248 Fed. 315, 242 Fed. 92.

§ 483. **Penalty.**—That any railroad, express company, car company, common carrier other than by water or the receiver, trustee, or lesse of any of them, or the master or owner of any steam, sailing, or other vessel who knowingly and willfully fails to comply with the provisions of the two preceding sections shall for every such failure be liable for and for-

feit and pay a penalty of not less than one hundred nor more than fiive hundred dollars: Provided, That when animals are carried in cars, boats, or other vessels in which they can and do have proper food, water, space, and opportunity to rest the provisions in regard to their being unloaded shall not apply.

Section three of the Act.

A penalty cannot be assessed for each animal. United States v. Boston & A. R. Co., 15 Fed. 209. The penalty should be assessed on each train load. United States v. St. Louis & S. F. R. Co., 107 Fed. 870. The shipper may recover his damages unaffected by the act. Southern Pac. Co. v. Arnett, 126 Fed. 75, 61 C. C. A. 131. Where there are several shipments in the same train, each shipment constitutes a separate case upon which for a violation of the act the penalty may be recovered. United States v. Bal. & O. S. W. R. Co., 159 Fed. 33, 86 C. C. A. 223; United States v. New York C. & H. R. R. Co., 168 Fed. 699, 94 C. C. A. 76. See to same effect. United States v. Atchison, T. & S. F. Ry. Co., 166 Fed. 160. Must show that carrier "knowingly and wilfully" confined the animals longer than twenty-eight hours, the government need not negative exceptions, and confinement in hands of connecting carrier is counted. United States v. Oregon S. L. R. Co., 160 Fed. 526. Action for penalty a civil suit, § 481 *supra*.

**Notes of Decisions Rendered Since 1909.**

A penalty for each loading and not for each car where more than one car loaded at same time. Baltimore & O. R. Co. v. U. S., 220 U. S. 94, 55 L. Ed. 384, 31 Sup. Ct. 368, reversing U. S. v. B. & O. R. Co., 159 Fed. 33, 86 C. C. A. 232, and citing old law, R. S. U. S. Sects. 4386, 4388 and decisions thereunder as follows: U. S. v. Boston & E. R. Co., 15 Fed. 209; U. S. v. St. L. & S. F. R. Co., 107 Fed. 870.

**Notes of Decisions Rendered Since 1915.**

States, 229 Fed. 116. Chicago & N. W. Ry. Co. v. United

Evil intent not required. Grand Trunk Ry. Co. v. United States, 234 Fed. 272, — C. C. A. —. Meaning of wilfully discussed. United States v. Philadelphia & R. Co., 238 Fed. 428.

§ 484. **Meat Inspection Act.**—The meat inspection act of March 4, 1907, chapter 2907, 34 Stat. L. 1260, contains provisions for the inspection of meats and animals that enter into interstate commerce. The provisions of this act are not generally germane to the subject of this book. One provision, however, does apply and it is here inserted.

That on and after October first, nineteen hundred and six, no person, firm, or corporation shall transport or offer for transportation, and no carrier of interstate or foreign commerce shall transport or receive for transportation from one state or territory or the District of Columbia to any other state or territory or the District of Columbia, or to any place under the jurisdiction of the United States, or to any foreign country, any carcasses or parts thereof, meat, or meat food products thereof which have not been inspected, examined, and marked as "Inspected and passed," in accordance with the terms of this act and with the rules and regulations prescribed by the Secretary of Agriculture: Provided, That all meat and meat food products on hand on October first, nineteen hundred and six, at establishments where inspection has not been maintained, or which have been inspected under existing law, shall be examined and labeled under such rules and regulations as the Secretary of Agriculture shall prescribe, and then shall be allowed to be sold in interstate or foreign commerce.

Eighth paragraph of above Act.

§ 485. **Transportation of Cattle from Quarantine Territory.**

Sec. 1. That the Secretary of Agriculture is authorized and directed to quarantine any state or territory or the District of Columbia, or any portion of any state or territory or the District of Columbia, when he shall determine the fact that cattle or other live stock in such state or territory or District of Columbia, are affected with any contagious, infectious, or communicable disease; and the Secretary of Agriculture is directed to give written or printed notice of the establishment of quarantine to the proper officers of railroad, steamboat, or other transportation companies doing business in or through any quarantined state or territory or the District of Columbia, and to publish in such newspapers in the quarantined state

or territory or the District of Columbia, as the Secretary of Agriculture may select, notice of the establishment of quarantine.

Sec. 2. That no railroad company or the owners or masters of any steam or sailing or other vessel or boat shall receive for transportation or transport from any quarantined state or territory or the District of Columbia, or from the quarantined portion of any state or territory or the District of Columbia, any cattle or other live stock, except as hereinafter provided; nor shall any person, company or corporation deliver for such transportation to any railroad company, or to the master or owner of any boat or vessel, any cattle or other live stock, except as hereinafter provided; nor shall any person, company, or corporation drive on foot or cause to be driven on foot, or transport in private conveyance or cause to be transported in private conveyance, from a quarantined state or territory or the District of Columbia, or from the quarantined portion of any state or territory or the District of Columbia, into any other state or territory or the District of Columbia, any cattle or other live stock, except as hereinafter provided.

Sections 1 and 2 of Act March 3, 1905. Statute discussed and demurrer to an indictment thereunder sustained. U. S. v. El Paso & N. E. R. Co., 178 Fed. 846.

## CHAPTER XI.

### *TRUST* AND OTHER COMBINATIONS IN RESTRAINT OF TRADE.


§ 486. Contracts, Combinations and Conspiracies in Restraint of Interstate Commerce Illegal.
487. Monopolies and Conspiracies and Combinations to Monopolize Interstate Trade Illegal.
488. Prohibition Applies to Territories and Between States and Territories.
489. Courts Given Jurisdiction to Enjoin Violations of Act.
490. Practice with Reference to Parties and Service of Subpœnas Thereon.
491. Property Owned under a Contract Violating This Act Being in Course of Interstate Transportation May Be Seized and Forfeited.
492. Measure of Damages in Favor of Person Injured.
493. Person Includes Corporation and Association.
494. Act of August 28, 1894, So Far as It Relates to Trusts and Combinations in Restraint of Trade.
495. Clayton Act. Definitions.
496. Price Discrimination Prohibited.
497. Lease or Sale of Patented Articles.
498. Damages May Be Recovered by Person Injured.
499. Effect of Final Judgments in Criminal Prosecutions.
500. Labor Not a Commodity.
501. Acquisition by a Corporation of Stock in Another Corporation, When Prohibited.
502. Interlocking Directorates, When Prohibited.
503. Punishment of Corporate Officers.
504. Certain Contracts of Common Carriers Must Be Let by Competitive Bids.
505. Authority to Enforce Certain Provisions of Act Vested in Interstate Commerce Commission, Federal Reserve Board and Federal Trade Commission.
506. Procedure for Hearings by Boards Vested with Jurisdiction under Act.
507. Effect of the Orders of Boards.
508. Judicial Proceedings to Enforce the Orders of the Boards.
509. Venue of Suits.
510. Attendance of Witnesses.
511. Guilt of Corporation Deemed Guilt of Officers.
512. District Courts Invested with Jurisdiction to Prevent Violations of the Act.
513. Private Persons May Obtain Injunctive Relief, When.
514. Procedure in the Issuance of Temporary Restraining Orders.

515. Security Before Issuing Restraining Orders When Required.
516. What Injunction Orders Shall Contain.
517. Injunctions in Suits Between Employer and Employee.
518. Disobedience of Orders of Court.
519. Same Subject. Procedure Prescribed.
520. Right to a Trial by Jury Provided for.
521. Review of Convictions for Violation of Court Orders.
522. Provision for Trial for Disobedience to Orders of Courts Not Applicable to Contempt Committed in the Presence of the Court.
523. Limitation in Proceedings for Contempt.
524. That Part of the Act Invalid, Not to Affect Validity of Other Portions.
525. Dumping Prohibited.

§ 486. **Contracts, Combinations and Conspiracies in Restraint of Interstate Commerce Illegal.**—Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section one of the Act of July 2, 1890, known as the Sherman Anti-Trust Act.

Agreement between carriers to fix and maintain rates condemned. Freight Bureau of Cincinnati v. Cincinnati, N. O. & T. P. Ry. Co., 6 I. C. C. 195, 4 I. C. R. 592, 618. Commission has no authority to execute anti-trust law. Sprigg v. Baltimore & O. R. Co, 8 I. C. C. 443. A noncompetitive rate deprives it of value as a standard. Mayor of Wichita v. A. T. & S. F. Ry. Co., 9 I. C. C. 534, 552. Rates advanced by concert of action "must be presumed to be higher than rates which unrestrained competition would produce." Central Yellow Pine Asso. v. Ill. Cent. R. Co., 10 I. C. C. 505, 540, 541, 542. Order of Commission enforced. Ill. Cent. R. Co. v. Int. Com. Com., 206 U. S. 441, 51 L. Ed. 1128, 27 Sup. Ct. 700; Tift v. Southern Ry. Co., 10 I. C. C. 548, 579. Order enforced. 138 Fed. 753; So. Ry. Co. v. Tift, 148 Fed. 1021,

206 U. S. 428, 51 L. Ed. 1124, 27 Sup. Ct. 709. Where "rates have been long in effect, and where the advance has been made by concerted action," the justification should be clear. Re Class and Commodity Rates from St. Louis to Texas Common Points, 11 I. C. C. 238, 268, 269, 270. Disappearance of competition given as one reason for holding an advance illegal. Cattle Raisers' Asso. v. Mo., Kan. & Tex. Ry. Co., 11 I. C. C. 296. A rate the result of an agreement is robbed of the presumption of reasonableness which it might otherwise possess. China and Japan Trading Co. v. Ga. R. Co., 12 I. C. C. 236, 241. But if the rate is reasonable although illegally established, the Commission will so hold. Id. 241. Warren Mfg. Co. v. So. Ry. Co., 12 I. C. C. 381. Evidence of a violation of the Anti-Trust Act pertinent, and such evidence will be given due weight though it is not conclusive. Enterprise Mfg. Co. v. Ga. R. Co., 12 I. C. C. 451, 456; Board of Bristol, Tenn., v. Virginia & S. Ry. Co., 15 I. C. C. 453, 454. Equity will not aid a plaintiff to effect a combination in restraint of trade. Am. Biscuit & Mfg. Co. v. Klotz, 44 Fed. 721, 1 Fed. Anti-Trust Dec. 2. A combination between coal dealers in different states to control prices prohibited. United States v. Jellico Mountain Coal & Coke Co., 46 Fed. 432, 12 L. R. A. 753, 1 Fed. Anti-Trust Dec. 9. Control of railroads by stock ownership so as to prevent competition within the spirit, if not letter of law. Clarke v. Cent. R. Banking Co., 50 Fed. 338, 1 Fed. Anti-Trust Dec. 17. An owner of a patentable invention, though a party to a combination to limit its manufacture, may maintain suit for its infringement. Strait v. National Harrow Co., 51 Fed. 819. 1 Fed. Anti-Trust Dec. 52. Act does not include common carriers; an agreement to maintain reasonable rates not violative of either section one or section two. United States v. Trans-Missouri Freight Asso., 53 Fed. 440, 1 Fed. Anti-Trust Dec. 80. Affirmed. 58 Fed. 58, 7 C. C. A. 15, 24 L. R. A. 73, 1 Fed. Anti-Trust Dec. 186. Reversed. 166 U. S. 290, 41 L. Ed. 1007, 17 Sup. Ct. 540, 1 Fed. Anti-Trust Dec. 648. Combinations of laborers illegal. United States v. Workingman's Amalg. Council, 54 Fed. 994, 26 L. R. A. 158, 1 Fed. Anti-Trust Dec. 110; Waterhouse v. Comer, 55 Fed. 149, 1 Fed. Anti-Trust Dec. 119. All contracts and combinations in restraint of interstate trade illegal, but

buying up by one corporation of all competing concerns not a violation of the statute. United States v. Knight, 60 Fed. 306, 1 Fed. Anti-Trust Dec. 250. Affirmed, same style case, 60 Fed. 934, 9 C. C. A. 297, 1 Fed. Anti-Trust Dec. 258, 24 L. R. A. 428, 156 U. S. 1, 11, 39 L. Ed. 325, 15 Sup. Ct. 249, 1 Fed. Anti-Trust Dec. 379, 387, holding that a monopoly in manufacture is not prohibited by the act. A combination to compel carriers engaged in interstate transportation to accede to certain demands illegal, whether such demands be reasonable or unreasonable. United States v. Elliott, 62 Fed. 801, 64 Fed. 27, 1 Fed. Anti-Trust Dec. 262, 311. Labor boycott violates act. Thomas v. Cincinnati, N. O. & T. P. Ry. Co., 62 Fed. 803, 1 Fed. Anti-Trust Dec. 266. Violence and intimidation for the purpose of preventing the moving of trains engaged in interstate commerce violates the act. Re Grand Jury, 62 Fed. 840, 1 Fed. Anti-Trust Dec. 301. Mentioned but not decided. Arthur v. Oakes, 63 Fed. 310, 329, 11 C. C. A. 209, 25 L. R. A. 414, 1 Fed. Anti-Trust Dec. 310. The word "conspiracy" broad enough to cover conspiracies of labor in restraint of trade or commerce. United States v. Debs, 64 Fed. 724, 1 Fed. Anti-Trust Dec. 322. Writ of *habeas corpus* denied. Re Debs, 158 U. S. 564, 39 L. Ed. 1092, 15 Sup. Ct. 900, 1 Fed. Anti-Trust Dec. 565. A corporation organized to secure assignments of all patents relating to a particular apparatus and to fix and regulate the prices thereof is illegal. National Harrow Co. v. Quick, 67 Fed. 130, 1 Fed. Anti-Trust Dec. 443, 608. Affirmed, same style case, 74 Fed. 236, 20 C. C. A. 410. National Harrow Co. v. Hench, 76 Fed. 667, 1 Fed. Anti-Trust Dec. 610. Affirmed, same style case, 83 Fed. 36, 27 C. C. A. 349, 39 L. R. A. 299, 1 Fed. Anti-Trust Dec. 742. See also same style case, 84 Fed. 226, 1 Fed. Anti-Trust Dec. 746. "A conspiracy is a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself unlawful or criminal, by criminal or unlawful means, the common design being the essence of the charge." This case, which was a charge to a jury, defines trade and commerce and holds "that Pullman cars in use upon the roads are instrumentalities of commerce." United States v. Cassidy, 67 Fed. 698, 702, 1 Fed. Anti-Trust Dec. 449, 455, citing Pettibone v. United States, 148 U. S. 197, 203, 37 L. Ed. 419,

13 Sup. Ct. 542. Not applicable to a state which by its laws assumes a monopoly of the liquor traffic. Lowenstein v. Evans, 69 Fed. 908, 1 Fed. Anti-Trust Dec. 598. An interstate carrier may legally make an exclusive arrangement with another carrier for through transportation. Prescott & A. C. R. Co. v. Atchison, T. & S. F. R. Co., 73 Fed. 438, 1 Fed. Anti-Trust Dec. 604. One having received the services of a tug cannot escape payment therefor, although the tug owners are members of an association illegal under the act. The Charles E. Wiswall, 74 Fed. 802, 1 Fed. Anti-Trust Dec. 608. Affirmed. Same style case, 86 Fed. 671, 30 C. C. A. 339, 1 Fed. Anti-Trust Dec. 850. The statute covers, and was intended to cover, common carriers by railroad, and prohibits all agreements and combinations in restraint of trade or commerce, regardless of the question whether or not such agreements were reasonable. United States v. Trans-Missouri Freight Asso., 166 U. S. 290, 327, 335, 41 L. Ed. 1007, 17 Sup. Ct. 540, 1 Fed. Anti-Trust Dec. 648. All restraints prohibited, whether reasonable or unreasonable, and whether or not the law is violated by the practical workings and results of the association alleged to be an illegal combination. United States v. Hopkins, 82 Fed. 529, 1 Fed. Anti-Trust Dec. 725, 748. Reversed because the business was not interstate commerce. Hopkins v. United States, 171 U. S. 578, 43 L. Ed. 290, 19 Sup. Ct. 40, 1 Fed. Anti-Trust Dec. 941. Followed. Anderson v. United States, 171 U. S. 604, 43 L. Ed. 300, 19 Sup. Ct. 50, 1 Fed. Anti-Trust Dec. 967. Any restraint illegal. United States v. Coal Dealers' Asso., 85 Fed. 252, 1 Fed. Anti-Trust Dec. 749. A contract operating as a restraint in soliciting orders for and selling goods in one state to be delivered in another is within the act. The doctrine of the common law as well as the effect of the statute discussed. United States v. Addyston Pipe & Steel Co., 85 Fed. 271, 29 C. C. A. 141, 46 L. R. A. 122, 1 Fed. Anti-Trust Dec. 772. Affirmed. Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 44 L. Ed. 136, 20 Sup. Ct. 96, 1 Fed. Anti-Trust Dec. 1009, but decree modified so as not to affect commerce wholly within a state. An independent dealer who, without knowledge of the intention of the buyer, sells all his product to one who makes the purchase as part of a general scheme of monopoly does not violate

the law. Carter-Crume Co. v. Peurrung, 86 Fed. 439, 30 C. C. A. 174, 1 Fed. Anti-Trust Dec. 844. Allegations sufficient to bring case within the law. Lowry v. Tile, Mantel & Grate Asso., 98 Fed. 817, 1 Fed. Anti-Trust Dec. 995. Affirmed. Montague v. Lowry, 115 Fed. 27, 52 C. C. A. 621, 2 Fed. Anti-Trust Dec. 112, 193 U. S. 38, 48 L. Ed. 608, 24 Sup. Ct. 307, 2 Fed. Anti-Trust Dec. 327. A note payable to a corporation for goods cannot be avoided because such corporation is a trust organized and operating in violation of the act. Union Sewer-Pipe Co. v. Connelly, 99 Fed. 354, 2 Fed. Anti-Trust Dec. 1. Affirmed on the point annotated and also holding that the Illinois Anti-Trust Act was void because it exempted agricultural products and live stock from its provisions. Connelly v. Union Sewer-Pipe Co., 184 U. S. 540, 46 L. Ed. 679, 22 Sup. Ct. 431, 2 Fed. Anti-Trust Dec. 118. An infringer of a patent cannot defend on the ground that the owner thereof is organized in violation of the act and procured the patent in pursuance of such illegal organization. National Folding Box & Paper Co. v. Robertson, 99 Fed. 985, 2 Fed. Anti-Trust Dec. 4; Otis Elevator Co. v. Geiger, 107 Fed. 131, 2 Fed. Anti-Trust Dec. 66; General Elec. Co. v. Wise, 119 Fed. 922, 2 Fed. Anti-Trust Dec. 205; United States Consolidated Seeded Raisin Co. v. Griffin, 126 Fed. 364, 61 C. C. A. 334, 2 Fed. Anti-Trust Dec. 288. If trade is restrained by a contract or combination, it is an illegal act, even though the public may be benefited thereby. United States v. Chesapeake & O. Fuel Co., 105 Fed. 93, 2 Fed. Anti-Trust Dec. 34. Affirmed. Chesapeake & O. Fuel Co. v. United States, 115 Fed. 610, 53 C. C. A. 256, 2 Fed. Anti-Trust Dec. 151. A combination of manufacturers and dealers, each member of which paid certain entrance fees and dues and the constitution of which prohibited its members from buying from other than members, illegal. Lowry v. Tile, Mantel & Grate Asso., 106 Fed. 38, 2 Fed. Anti-Trust Dec. 53. Affirmed. Montague v. Lowry, 115 Fed. 27, 52 C. C. A. 621, 2 Fed. Anti-Trust Dec. 112, 193 U. S. 38, 48 L. Ed. 608, 24 Sup. Ct. 307, 2 Fed. Anti-Trust Dec. 327. A pooling combination of carriers is illegal, and a carrier party thereto cannot maintain a suit for injunction against a ticket broker who sells non-transferable tickets issued as part of the pooling agreement. Delaware, L. & W.

R. Co. v. Frank, 110 Fed. 689, 2 Fed. Anti-Trust Dec. 81. Immunity act of Feb. 11, 1893, does not apply to this act. Foot v. Buchanan, 113 Fed. 156, 2 Fed. Anti-Trust Dec. 103. A private individual may successfully defend an action brought against him on a contract in violation of this act. A patentee may legally put restraint on a licensee of the patent, although such restraints are violative of commerce in the patented article. Bement v. National Harrow Co., 186 U. S. 70, 46 L. Ed. 1058, 22 Sup. Ct. 747, 2 Fed. Anti-Trust Dec. 169. But the contract extending beyond the protection of the patent is illegal. Indiana Mfg. Co. v. J. I. Case, Threshing Mch. Co., 148 Fed. 21. Reversed, same style case, 154 Fed. 365, 83 C. C. A. 343. A paving contract limiting the material used to that manufactured by only one company is not illegal. Field v. Barber Asphalt Paving Co., 117 Fed. 925, 2 Fed. Anti-Trust Dec. 192. Affirmed, same style case, 194 U. S. 618, 48 L. Ed. 1142, 24 Sup. Ct. 784, 2 Fed. Anti-Trust Dec. 555. The statute includes all combinations which directly and substantially restrict interstate commerce, and applies to interstate carriers. The act is violated by a contract by which a majority of the stock of each of two competing roads is transferred to a corporation organized to vote such stock, the voting corporation issuing its stock to the holders of the stock of the two railroad corporations. United States v. Northern Securities Co., 120 Fed. 721, 2 Fed. Anti-Trust Dec. 215. Affirmed, reviewing and discussing former anti-trust decisions of the court. Northern Securities Co. v. United States, 193 U. S. 197, 48 L. Ed. 679, 24 Sup. Ct. 436, 2 Fed. Anti-Trust Dec. 338. A board of trade may sell its quotations to a telegraph company with the limitation that they shall not be furnished to a bucket shop. Board of Trade of Chicago v. Christie Grain & Stock Co., 121 Fed. 608, 2 Fed. Anti-Trust Dec. 233. Reversed on other grounds. Christie Grain & Stock Co. v. Board of Trade of Chicago, 125 Fed. 161, 61 C. C. A. 11. Circuit court of appeals reversed and circuit court affirmed same style case. Board of Trade of Chicago v. Christie Grain & Stock Co., 198 U. S. 236, 49 L. Ed. 1031, 25 Sup. Ct. 637, 2 Fed. Anti-Trust Dec. 717. A combination to restrain trade illegal, although prices resulting therefrom reasonable. United States v. Swift &

Co., 122 Fed. 529, 2 Fed. Anti-Trust Dec. 237. Affirmed. Swift & Co. v. United States, 196 U. S. 375, 49 L. Ed. 518, 25 Sup. Ct. 276, 2 Fed. Anti-Trust Dec. 641, holding that although the separate elements of a combination may be legal, if the common intent is to monopolize trade, it is illegal. The Minnesota Anti-Trust Act not violated under the facts pleaded. Minnesota v. Northern Securities Co., 123 Fed. 692, 2 Fed. Anti-Trust Dec. 246. Reversed because the federal court had no jurisdiction and remanded to the state court. Minnesota v. Northern Securities Co., 194 U. S. 48, 48 L. Ed. 870, 24 Sup. Ct. 598, 2 Fed. Anti-Trust Dec. 533. A combination to control prices in a local market and to refuse to sell to consumers who buy from nonmembers, some of whom live out of the state, is not within act. Ellis v. Inman, Poulsen & Co., 124 Fed. 956, 2 Fed. Anti-Trust Dec. 268. Reversed, holding that the federal law applied. Same style case, 131 Fed. 182, 65 C. C. A. 488, 2 Fed. Anti-Trust Dec. 577. Sale of goods limiting the right of the vendor to go into business within fifty miles of the place of sale valid, and being within a state not violative of the federal act. Robinson v. Suburban Brick Co., 127 Fed. 804, 62 C. C. A. 484, 2 Fed. Anti-Trust Dec. 312. Booth & Co. v. Davis, 127 Fed. 875, 2 Fed. Anti-Trust Dec. 318. Affirmed. Davis v. Booth, 131 Fed. 31, 65 C. C. A. 269, 2 Fed. Anti-Trust Dec. 566. Writ of *certiorari* denied by Supreme Court. 195 U. S. 636. See also Camors-McConnell Co. v. McConnell, 140 Fed. 412, 2 Fed. Anti-Trust Dec. 817. Affirmed. McConnell v. Camors-McConnell Co., 140 Fed. 987, 72 C. C. A. 681, 2 Fed. Anti-Trust Dec. 825. Rehearing denied. Same case, 152 Fed. 321, 81 C. C. A. 429; American Brake Beam Co. v. Pungs, 141 Fed. 923, 73 C. C. A. 157, 2 Fed. Anti-Trust Dec. 826. Combination of carriers by which by concerted action rates are advanced violates act. Tift v. Southern Ry. Co., 138 Fed. Anti-Trust Dec. 753, 2 Fed. Anti-Trust 733. Affirmed. So. Ry. Co. v. Tift, 148 Fed. 1021, 206 U. S. 428, 51 L. Ed. 1124, 27 Sup. Ct. 709. After a copyrighted book has been sold, although with a statement printed therein that the purchaser could not sell except at a stated price, the purchaser can sell at any price he sees fit. Book trust declared illegal. Bobbs-Merrill Co. v. Straus, 139 Fed. 155, 2 Fed. Anti-Trust Dec. 755. Affirmed. Same style case, 147 Fed.

15, 77 C. C. A. 607, 15 L. R. A. 766, 210 U. S. 339, 52 L. Ed. 1086, 28 Sup. Ct. 722. The immunity act, act Feb. 19, 1903, applies to the Anti-Trust Act. Re Hale, 139 Fed. 496, 2 Fed. Anti-Trust Dec. 804. Affirmed. Hale v. Henkel, 201 U. S. 43, 50 L. Ed. 652, 26 Sup. Ct. 370, 2 Fed. Anti-Trust Dec. 874; McAlister v. Henkel, 201 U. S. 90, 50 L. Ed. 671, 26 Sup. Ct. 385, 2 Fed. Anti-Trust Dec. 919. Followed, Nelson v. United States, 201 U. S. 92, 50 L. Ed. 673, 26 Sup. Ct. 358, 2 Fed. Anti-Trust Dec. 920. A patentee may grant licenses to sell the patented article on condition of selling at prices fixed by the patentee, but under the facts of this case license contract void as violative of Anti-Trust Act. Rubber Tire Wheel Co. v. Milwaukee Rubber Co., 142 Fed. 531, 2 Fed. Anti-Trust Dec. 855. Reversed, same style case, 154 Fed. 358, 83 C. C. A. 336. Good will contract valid. A purchaser of a river boat cannot refuse to pay therefor because in the contract of purchase he agreed to maintain existing rates. Cincinnati, P. B. S. & P. P. Co. v. Bay, 200 U. S. 179, 50 L. Ed. 428, 26 Sup. Ct. 208, 2 Fed. Anti-Trust Dec. 867. An order directing a witness to answer questions relating to violations of the act is interlocutory and not appealable. Alexander v. United States, 201 U. S. 117, 50 L. Ed. 686, 26 Sup. Ct. 356. 2 Fed. Anti-Trust Dec. 945. Immunity does not apply to corporations whose officers may testify, it does not apply to individuals who testify at hearings before the Commissioner of Corporations. United States v. Armour, 162 Fed. 808, 2 Fed. Anti-Trust Dec. 951. Act does not make void a collateral contract for the manufacture and sale of goods. Hadley, Dean Plate Glass Co. v. Highland Glass Co., 143 Fed. 242, 74 C. C. A. 462, 2 Fed. Anti-Trust Dec. 994. Followed, Chicago Wall Paper Mills v. General Paper Co., 147 Fed. 491, 78 C. C. A. 607, 2 Fed. Anti-Trust Dec. 1027. It is not unlawful for a manufacturer of a proprietary medicine to contract with the dealers who purchase such medicine from him, that they shall sell at a fixed price. Hartman v. John D. Park & Sons, 145 Fed. 358, 2 Fed. Anti-Trust Dec. 999. Reversed, holding contract unenforceable. John D. Park & Sons v. Martman, 153 Fed. 24, 82 C. C. A. 158, 12 L. R. A. (N. S.) 1135. Circuit court

followed Dr. Miles Medicine Co. v. Jaynes Drug Co., 149 Fed. 838. Circuit court of appeal followed. Dr. Miles Medical Co. v. John D. Park & Sons Co., 164 Fed. 803, 90 C. C. A. 599. Writ of error granted by Supreme Court. A carrier may enter into an exclusive contract with one to build up, develop and conduct a particular traffic business along its line. Delaware, L. & W. R. Co. v. Kutter, 147 Fed. 51, 77 C. C. A. 315, 2 Fed. Anti-Trust Dec. 1021. Petition for writ of certiorari denied, 203 U. S. 588, 51 L. Ed. 330. An agreement between publishers of copyrighted books, who control ninety per cent. of the book business, not to sell to any one who cuts prices, or who sells to one who cuts prices, is illegal. Mines v. Scribner, 147 Fed. 927, 2 Fed. Anti-Trust Dec. 1035. See case of Bobbs-Merrill Co. v. Straus, *supra*. The attempt of a labor union to compel, by a boycott, a manufacturer to unionize his factory not within act. Loewe v. Lawlor, 148 Fed. 924. See same case, 130 Fed. 633, 2 Fed. Anti-Trust Dec. 563, 142 Fed. 216, 2 Fed. Anti-Trust Dec. 854. Reversed, holding that such acts constituted a violation of the act. Loewe v. Lawlor, 208 U. S. 274, 52 L. Ed. 488, 28 Sup. Ct. 301. Purchase money of goods can not be recovered when the purchase was made as part of a combination in restraint of trade. Continental Wall Paper Co. v. Lewis Voight & Sons Co., 148 Fed. 939, 78 C. C. A. 567. Affirmed, same style case, 212 U. S. 227, 53 L. Ed. 486, 29 Sup. Ct. 280. Act not effect a contract by which foreign ship owners endeavor to pervent dealing with their competitors. Thomson v. Union Castle Mail Steamship Co., 149 Fed. 933. Reversed, holding that when the combination was put in effect in the United States it violated its laws. Thomson v. Union Castle Mail Steamship Co., 166 Fed. 251, 32 C. C. A. 315. Trusts defined, quoting Coke's definition. Re Charge to Grand Jury, 151 Fed. 834. Though a rate is established in violation of Anti-Trust Act, application must first be made to the Interstate Commerce Commission to declare rate illegal. American Union Coal Co. v. Penn. R. Co., 159 Fed. 278; Meeker v. Lehigh V. R. Co., 162 Fed. 354. Mere agreement not effective does not violate law. The facts in the case show a violation. United States Tobacco Co. v. American Tobacco Co., 163 Fed. 701; Weisert Bros. Tobacco

Co. v. American Tobacco Co., Larus & Bro. Co. v. Same, 163 Fed. 712. The American Tobacco Co., declared a trust. United States v. American Tobacco Co., 164 Fed. 700; People's Tobacco Co. v. American Tobacco Co., 170 Fed. 396, 95 C. C. A. 566. A patentee may legally limit the licensee in the manner of selling. Goshen Rubber Works v. Single Tube A. & B. Tire Co., 166 Fed. 431, 92 C. C. A. 183, but not so when the purpose of the contract is to enhance prices and not as an incident to the sale of the patent right. Blount Mfg. Co. v. Yale & Towne Mfg. Co., 166 Fed. 555. Facts not constituting a violation. Bigelow v. Calumet & Hecla Mining Co., 167 Fed. 704. Affirmed, same style case, 167 Fed. 721, 94 C. C. A. 13. A lease of a plant executed in pursuance of a plan to monopolize the cotton compressing business illegal. Shawnee Compress Co. v. Anderson, 209 U. S. 423, 52 L. Ed. 865, 28 Sup. Ct. 572. No judgment will be rendered for the purchase price of property when "such a judgment would, in effect, aid the execution of agreements which constituted" an illegal combination. Four judges dissent. Continental Wall Paper Co. v. Voight & Sons Co., 212 U. S. 227, 53 L. Ed. 486, 29 Sup. Ct. 280.

**Notes of Decisions Rendered Since 1909.**

Monopoly defined as the concentration of business. National Fire Proofing Co. v. Masons' Builders' Ass'n, 169 Fed. 259, 94 C. C. A. 535. Charge to a jury defining monopoly and giving the elements of the crime under the statute. U. S. v. American Naval Stores Co., 172 Fed. 455, affirming Nash v. U. S., 186 Fed. 489, see also U. S. v. American Naval Stores Co., 186 Fed. 592. A Coal Company may select its customers and refuse to sell others. Union Pac. Coal Co. v. U. S., 173 Fed. 737, 97 C. C. A. 578. That the holder of a patent is a party to an unlawful conspiracy in restraint of trade is no defense to a suit for an infringement of the patent. Johns-Pratt Co. v. Sachs Co., 176 Fed. 738; Northwestern Cons. M. Co. v. Callam & Son, 177 Fed. 786; Virtue v. Creamery Package Mfg. Co., 179 Fed. 115, 102 C. C. A. 413; Motion Picture Patent Co. v. Ullman, 186 Fed. 174; U. S. Fire Escape Co. v. Joseph Halstead Co., 195 Fed. 295; Fraser v. Duffey, 196 Fed. 900; Coco-Cola Co. v. Deacon-Brown

Bottling Co., 200 Fed. 105; Coco-Cola Co. v. Gay-Ola Co., 200 Fed. 720; Motion Picture Patent Co. v. Eclair Film Co., 208 Fed. 416. The prohibition is of all restraint, not merely unreasonable restraint. Ware-Kramer Tobacco Co. v. Am. Tob. Co., 180 Fed. 160. A sale of corporate assets can not be enjoined under the anti-trust statute unless such sale furthers a conspiracy in violation of such statute. Bonny v. Cumberland-Ely Coffee Co., 183 Fed. 640. Sale of good will legal if made in good faith, otherwise if for the purpose of restraining trade. Darius Cole Transp. Co. v. White Star Line, 186 Fed. 63, 108 C. C. A. 165, writ of *certiorari* denied same styled case, 225 U. S. 704., 56 L. Ed. 1265, 32 Sup. Ct. 837. To the same effect see U. S. Great Lakes Towing Co., 208 Fed. 733, holding the contract there set out to be illegal. Sufficiency of indictment discussed. U. S. v. Swift, 188 Fed. 92; U. S. v. Patterson, 201 Fed. 697. Not all combinations illegal. U. S. v. E. I. DuPont De Nemours & Co., 188 Fed. 127. A railroad company can not legally give an exclusive right to one tug for the use of its pier. Baker-Whiteley Coal Co. v. B. & O. R. Co., 188 Fed. 305, 110 C. C. A. 234, reversing same styled case, 176 Fed. 632. No defense to a condemnation proceeding that corporation seeking to condemn was an illegal combination. Oregon-Washington R. & Nav. Co. v. Wilkinson, 188 Fed. 363. Purchase of controlling stock in competitive corporation held invalid, but not to prevent a sale thereof in good faith. Steele v. United Fruit Co., 190 Fed. 631. Regulation of trade not the same as restraint of trade. U. S. v. John Reardon & Sons Co., 191 Fed. 454. Purchaser of goods can not defend against suit for purchase price on the ground that the seller is engaged in violating the law. International Harvester Co., v. Oliver, 192 Fed. 59. As to Harvester Co., see U. S. v. International Harvester Co., 214 Fed. 987. A contract between a long distance telephone company and a local one for exclusive interchange of messages legal. Pacific Tel. & Tel. Co. v. Anderson, 196 Fed. 699. A holding to the contrary. U. S. Telephone Co. v. Central Union Tel. Co., 202 Fed. 66, 122 C. C. A. 86. affirming same styled case, 171 Fed. 130. A defendant convicted of violating the statute may nevertheless sell its trade-mark. Weyman-Bruton Co. v. Old Indian Snuff Mills, 197 Fed. 1075. The

statute applies to international transportation. U. S. v. Hamburg-Amer. P.-F.-A. Geselschaft, 200 Fed. 806 A. contract between a corporation and a labor union by which union laborers were employed, but which did not pervent the employment of others than union men, legal. Post v. Buck's Stove & Range Co., 200 Fed. 918. "Restraint of Trade" includes restraint of competition. U. S. v. Eastern States Retail L. D. Ass'n, 201 Fed. 581. The degree of restraint is immaterial. U. S. v. Patterson, 201 Fed. 697; same case and style, 205 Fed. 292. The enforcement in good faith by citizens of a municipality of an ordinance invalid under the statute does not subject such citizens to liability in damages. Citizens' Wholesale Supply Co. v. Snyder, 201 Fed. 907. Held that the United Mine Workers is an unlawful combination. Hitchman Coal & Coke Co. v. Mitchell, 202 Fed. 512. Coal carrying railroads enjoined. U. S. v. Lake S. & M. S. Ry. Co., 203 Fed. 295. The statute applies not only to those who initiate the monopoly, but also to those who prosecute the purpose. U. S. v. New Departure Mfg. Co., 204 Fed. 107. A license restriction not for the purpose of protecting the patent but to restrict trade is illegal. Robt. H. Ingersoll & Bro. v. McColl, 204 Fed. 147. Circumstantial evidence sufficient to go to the jury under the facts stated. Hale v. Hatch & North Coal Co., 204 Fed. 433. Not a monopoly for a pipe line company to pipe only its own oil. Prairie Oil. & Gas. Co. v. U. S. 204 Fed. 798, Opin, Com. Ct. Nos. 75 to 80, page 545, reversed without discussing this point. U. S. v. Ohio Oil Co., 234 U. S. 548, 58 L. Ed. 1454, 34 Sup. Ct. 956. A patentee may not resort to unfair methods to force a competitor out of business. The patent laws and the anti-trust laws must be construed together. U. S. v. Patterson, 205 Fed. 292, 201 Fed. 697. Combination held illegal though not unduly exercised to raise prices. O'Halloran v. Am. Sea Green Slate Co., 207 Fed. 187. A contract between many engaged in the same business to refrain from selling an individual or a class is illegal. U. S. v. Southern Wholesale Grocers' Ass'n, 207 Fed. 434. Following cited cases from the Supreme Court held that a patentee may not restrict the sale of a patented article after sale thereof to a dealer. Kellogg Toasted Corn Flakes Co. v. Buck, 208 Fed. 383. A conspiracy in relation to

labor unions defined. Lawlor v. Loewe, 209 Fed. 721, for a history of this case see p. 723 of opinion. The restraint here found to be unreasonable. U. S. v. Whiting, 212 Fed. 466. A "boycott" not necessarily illegal, the test being the legality of the object and of the means used. Gill Engraving Co. v. Doerr, 214 Fed. 11. Elimination of competition by solidation of competing corporations equally illegal as though such purpose was effected by an agreement. U. S. v. International Harvester Co., 214 Fed. 987. Acts done outside the United State in Costa Rica not within the statute. American Banana Co. v. United Fruit Co., 213 U. S. 347, 53 L. Ed. 826, 29 Sup. Ct. 511, affirming same styled case, 166 Fed. 261, 92 C. C. A. 325. "Conspiracy" defined. United States v. Kissell, 218 U. S. 601, 54 L. Ed. 1168, 31 Sup. Ct. 124, reversing on another point same styled case when definition is given, 173 Fed. 823. That a medicine is a proprietary one does not make a restraint of trade thereon otherwise than illegal. Dr. Miles Medical Co. v. John D. Park & Sons Co., 200 U. S. 373, 55 L. Ed. 502, 31 Sup. Ct. 376, affirming same styled case, 164 Fed. 803, 90 C. C. A. 579. "Rule of reason" stated and the statute fully discussed. Standard Oil Co. v. United States, 221 U. S. 1, 55 L. Ed. 169, 31 Sup. Ct. 502, 34 L. R. A. (N. S.) 834, Ann. Cas. 1912 D. 734, modifying, U. S. v. Standard Oil Co., 173 Fed. 177; U. S. v. Am. Tob. Co., 221 U. S. 106, 55 L. Ed. 663, 31 Sup. Ct. 632, reversing same styled case, 164 Fed. 700. Consolidation of railway terminal facilities at St. Louis held illegal, U. S. v. Terminal R. Ass'n, 224 U. S. 383, 56 L. Ed. 810, 31 Sup. Ct. 507. An agreement of 80 per cent of the jobbers in a particular business to buy only from certain persons illegal. Standard Sanitary Mfg. Co. v. U. S., 226 U. S. 20, 57 L. Ed. 107, 33 Sup. Ct. 9, affirming, U. S. v. Standard Sanitary Mfg. Co., 191 Fed. 172. The combination between the Union Pacific Railroad Co. and the Southern Pacific Co. held to be illegal. U. S. v. Union Pac. Co., 226 U. S. 61, 57 L. Ed. 124, 33 Sup. Ct. 53, modifying decisions in same styled case, 188 Fed. 102. Combination of coal-carrying railroads held illegal. U. S. v. Reading Co., 226 U. S. 324, 57 L. Ed. 243, 33 Sup. Ct. 90, modifying decisions in same styled case, 183 Fed. 427, see same case, 228 U. S. 158, 57 L. Ed. 779, 33 Sup. Ct. 509. A conspiracy to run a corner

in cotton illegal. United States v. Patten, 226 U. S. 525, 57 L. Ed. 333, 33 Sup. Ct. 141, reversing same styled case, 187 Fed. 664. An exclusive sales agent may be contracted for. Virtue v. Creamery Package Mfg. Co., 227 U. S. 8, 57 L. Ed. 393, 33 Sup. Ct. 202, affirming same styled case, 179 Fed. 115, 102 C. C. A. 413. A combination of manufacturers of different non-competing patented machines not illegal, though thereby a large part of the shoe machinery business is placed under a single control. U. S. v. Winslow, 227 U. S. 202, 57 L. Ed. 481, 33 Sup. Ct. 253, affirming same styled case, 195 Fed. 578. An agreement limiting through routes and joint rates to one wharfage company illegal. U. S. v. Pacific & Arctic Ry. & Nav. Co., 228 U. S. 87, 57 L. Ed. 742, 33 Sup. Ct. 433; the patent laws do not give the right to limit by notice the price at which patented articles shall be resold. Bauer & Cie v. O'Donnell, 229 U. S. 1, 57 L. Ed. 1041, 33 Sup. Ct. 616. The statute is not so vague as to be void; the legality of the charges given the jury by the trail judge discussed. Nash v. U. S., 229 U. S. 373, 57 L. Ed. 1232, 33 Sup. Ct. 780, reversing same styled case, 186 Fed. 489, 108 C. C. A. 467, and see U. S. v. Naval Stores Co., 172 Fed. 455, 186 Fed. 592. Copyright laws do not protect against the provisions of the anti-trust laws. Straus v. Am. Publishers' Ass'n, 231 U. S. 222, 58 L. Ed. 192, 34 Sup. Ct. 84, citing Bobbs-Merrill Co. v. Straus, 210 U. S. 339, 52 L. Ed. 1086, 28 Sup. Ct. 722 and other cases. For proceedings in the state court see: Straus v. Am. Publishers' Ass'n, 177 N. Y. 473, 64 L. R. A. 701, 101 Am. St. Rep. 819, 69 N. E. 1107; Straus v. Am. Publishers' Ass'n, 193 N. Y. 496, 86 N. E. 525; Straus v. Publishers' Ass'n, 144 N. Y. 548, 93 N. E. 1133. Reports sent out with the purpose of preventing the members of an association from dealing with certain persons constitue a violation of the statute. Eastern States Retail Lumber Dealers' Ass'n v. U. S., 234 U. S. 600, 58 L. Ed. 1490, 34 Sup. Ct. 951, affirming, U. S. v. Same, 201 Fed. 581. A state anti-trust law sustained. Water-Pierce Oil Co. v. Texas, 212 U. S. 86, 53 L. Ed. 417, 29 Sup. Ct. 220, affirming same styled case, 48 Tex. Civ. App. 163, 106 S. W. 918; Hammond Packing Co. v. Arkansas, 212 U. S. 322, 53 L. Ed. 530, 29 Sup. Ct. 370, affirming same styled case, 81 Ark.

519, 126 Am. St. Rep. 1047, 100 S. W. 407; International Harvester Co. v. Missouri, 234 U. S. 199, 58 L. Ed. 1276, 34 Sup. Ct. 854, affirming same styled case, 237 Mo. 369, 141 S. W. 672.

State law void for uncertainty. International Harvester Co. v. Kentucky, 234 U. S. 216, 58 L. Ed. 1284, 34 Sup. Ct. 853, reversing, International H. Co. v. Kentucky, 147 Ky. 564, 144 S. W. 1064, 1068, 1070; International H. Co. v. Ky., 147 Ky. 795, 146 S. W. 12, 148 Ky. 572, 147 S. W. 1199; Collins v. Kentucky, 234 U. S. 634, 58 L. Ed. 1510, 34 Sup. Ct. 924, reversing same styled case, 141 Ky. 564, 133 S. W. 233. Judgment for damages sustained. Lawlor v. Loewe, 236 U. S. 522, 59 L. Ed. 341, 35 Sup. Ct. 170, affirming, Loewe v. Lawlor, 209 Fed. 721, 126 C. C. A. 445. The Anti-Trust Act and the Commodity Clause of the Interstate Commerce Act are "not concerned with the interests of the parties, but with the interest of the public." U. S. v. Delaware, L. & W. R. Co., 238 U. S. 516, 59 L. Ed. 1438, 35 Sup. Ct. 873.

**Notes of Decisions Rendered Since 1915.**

"Wholesaler" defined and holding that a manufacturer may lawfully limit his sales to wholesalers. Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co., 227 Fed. 46, 141 C. C. A. 594, citing Cooley on Torts, page 278 and Greater New York Film Co. v. Biograph Co., 203 Fed. 39, 121 C. C. A. 375. Principal case cited arguendo, Coca-Cola Co. v. Butler & Sons, 229 Fed. 224, 233, holding that a manufacturer may limit sales to special licensees; cited and followed, United States v. Colgate & Co., 253 Fed. 522 (see case in Sup. Court below); cited in holding that the manufacturer could not limit the dealer to selling only its goods, Standard Fashion Co. v. Magrane Houston Co., 254 Fed. 493; cited Boran v. Goodyear Tire & Rubber Co., 256 Fed. 570. An association may refuse to deal with a list of persons but must not seek to coerce others to follow the same rule. United States v. King, 229 Fed. 275; followed same styled case 250 Fed. 908 holding a secondary boycott illegal. See also Arkansas Brokerage Co. v. Dunn, 173 Fed. 899. Exclusive agency contracts valid. Cole Motor Car Co. v. Hurst, 228 Fed.

280. Contracts under circumstances named constituted a violation of the section. United States v. Corn Products Refining Co., 234 Fed. 964. Appeal taken and dismissed. Where there is repentance courts may grant absolution. United States v. American Can Co., 234 Fed. 1019. Labor unions may violate. Dowd v. United Mine Workers of America, 235 Fed. 1, 148 C. C. A. 495; Kroger Grocery & Baking Co. v. Retail Clerks, 250 Fed. 890. Cited on a question of practice, Brown v. Denver Omnibus Cab. Co., 254. Fed. 560, 566. See also United States v. Associated Bill Posters, 235 Fed. 540. An agreement restricting purchases to those who deal only with members of an association illegal, Knauer v. United States, 237 Fed. 8, 150 C. C. A. 210. Illegal combination under a state statute. Lane v. Leiter, 237 Fed. 149. Act not intended to create competition never theretofore existing. United States v. Southern Pac. Co., 239 Fed. 998. Acts held illegal. United States v. Cowell, 243 Fed. 730. After an absolute sale contract controlling resale prices illegal. Ford Motor Co. v. Union Motor Sales Co., 244 Fed. 156, 156 C. C. A. 584. See new annotations to section 497, *post*. A losing business may lawfully sell to its only competitor. American Press Asso., v. United States, 245 Fed. 91. Lumberman's Association illegal. United States v. Hollis, 246 Fed. 611. An agreement to control the prices of onions obnoxious to the law. United States v. Piowatty & Sons, 251 Fed. 375. Principals may lawfully restrict its district agents to its own goods. Pictorial Review v. Curtis Pub. Co., 255 Fed. 206, see discussion same question Standard Fashion Co. v. Magrane Houston Co., 251 Fed. 559, 163 C. C. A. 553, 254 Fed. 493, 259 Fed. 793, — C. C. A. —. "Irregular or malicious strikes," illegal notwithstanding section 20 Clayton Act. United States v. Norris, 255 Fed. 423. "Convincing proof" is necessary to modify a consent decree. United States v. Discher, 255 Fed. 719. Equity will give no aid in maintaining a select list to whom sales are made. B. V. D. Co. v. Isaac, 257 Fed. 709. Control of fish market unlawful. United States v. New England Fish Exchange, 258 Fed. 732. Boycott to prevent use of appliances not made by union labor unlawful. Boyle v. United States, 259 Fed. 803, — C. C. A. —. Similarly a conspiracy between tile dealers and tile setters. Belfi v. United

States, 259 Fed. 822, — C. C. A. —. Proof of overt act "is not essential," Lamar v. United States, 260 Fed. 561, — C. C. A. —, 251 U. S. —, 64 L. Ed. —, 40 Sup. Ct.

Rebates granted by steamship companies plying between New York and South Africa conditioned on exclusive business with the company, unlawful. Thomsen v. Cayser, 243 U. S. 66, 61 L. Ed. 597, 37 Sup. Ct. 353. Contract for resale prices unenforceable. Boston Store v. American Graphophone Co., 246 U. S. 8, 62 L. Ed. 551, 38 Sup. Ct. 257 but seller may refuse to sell those who do not conform to his ideas as to resales. United States v. Colgate & Co., 250 U. S. 300, 63 L. Ed. 570, 39 Sup. Ct. 465. Rule of Board of Trade lawful. Board of Trade v. United States, 246 U. S. 231, 62 L. Ed. 683, 38 Sup. Ct. 242. Facts shown not sufficient to establish an illegal combination. United States v. United Shoe Machinery Co., 247 U. S. 32, 62 L. Ed. 968, 38 Sup. Ct. 473. Contracts requiring purchasers to maintain prescribed resale prices violate the anti-trust laws. United States v. Schrader, 251 U. S. —, 64 L. Ed. —, 40 Sup. Ct. —.

Usual devices of labor unions to prevent use of non-union-made goods not enjoined. Paine Lumber Co. v. Neal, 244 U. S. 459, 61 L. Ed. 1256, 37 Sup. Ct. 718.

Actual, not potential, monopoly is prohibited by anti-trust laws; mere size is not unlawful and public interest must be considered. United States v. United States Steel Corporation, 250 U. S. —, 64 L. Ed. —, 40 Sup. Ct. —, where the court concluded its opinion as follows: "In conclusion, we are unable to see that the public interest will be served by yielding to the contention of the government respecting the dissolution of the company or the separation from it of some of its subsidiaries; and we do see in a contrary conclusion a risk of injury to the public interest, including a material disturbance of, and, it may be, serious detriment to, the foreign trade. And in submission to the policy of the law and its fortifying prohibitions the public interest is of paramount regard."

See section 329, *ante*, for decisions relating to Federal Trade Commission. Partial restraint of trade by agreements to discontinue business only indirectly relate to the Federal Anti-Trust Statutes. The principles controlling where there are these partial restraints are discussed in Pearson v. Duncan &

Sons (Ala.) 73 So. 406, 3 A. L. R. 242; Shappard v. Lesser, 127 Ark. 590, 193 S. W. 262, 3 A. L. R. 247, 250.

§ 487. **Monopolies and Conspiracies and Combinations to Monopolize Interstate Trade Illegal.**—Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section two of the Act July 2, 1890, known as the Sherman Anti-Trust Law.

What an indictment for violation should state. United States v. Greenhut, 50 Fed. 469, 1 Fed. Anti-Trust Dec. 30. Re Corning, 51 Fed. 205, 1 Fed. Anti-Trust Dec. 33; Re Terrell, 51 Fed. 213, 1 Fed. Anti-Trust Dec. 46; United States v. Patterson, 59 Fed. 280, 1 Fed. Anti-Trust Dec. 244. Does not prevent a state corporation from acquiring title, control and disposition of property in the several states. Re Greene, 52 Fed. 104, 1 Fed. Anti-Trust Dec. 54. An agreement among a number of lumber dealers to raise the price fifty cents per thousand, not illegal unless it includes the entire traffic. 52 Fed. 646, 1 Fed. Anti-Trust Dec. 77. "Monopolize" is the basis of the statute and merely injuring or restraining trade not prohibited. United States v. Patterson, 55 Fed. 605, 640, 641, 1 Fed. Anti-Trust Dec. 133, 176,177. A purchaser of liquors from an illegal combination cannot keep the goods and recover the price paid, even though it was excessive. Dennehy v. McNulta, 86 Fed. 825, 41 L. R. A. 609, 30 C. C. A. 422, 1 Fed. Anti-Trust Dec. 855. A contract with an association having a monopoly of the commerce in a particular commodity by which it agrees to pay a dividend to a company on condition that such company would close its factory for a year is contrary to public policy and unlawful. Cravens v. Carter-Crume Co., 92 Fed. 479, 34 C. C. A. 479, 1 Fed. Anti-Trust 983. Mere attempts to monopolize trade not punishable, combination the main purpose of which is to foster trade and which only indirectly or

incidentally restricts competition not illegal. Whitwell v. Continental Tobacco Co., 125 Fed. 454, 60 C. C. A. 290, 64 L. R. A. 689, 2 Fed. Anti-Trust Dec. 271; Phillips v. Iola Portland Cement Co., 125 Fed. 593, 61 C. C. A. 19, 2 Fed. Anti-Trust Dec. 284. Petition for writ of certiorari denied. 192 U. S. 606, 48 L. Ed. 585, 24 Sup. Ct. 850. A demand for a "closed shop" illegal. Barnes & Co. v. Berry, 156 Fed. 72. "Monopoly" defined. Burrows v. Interurban Metropolitan Co., 156 Fed. 389. An agreement, however, between mine operators not to employ members of a certain union held not to be illegal. Goldfield Consolidated Mines Co. v. Goldfield Mines Union, 159 Fed. 500. Monopoly by efficiency is not illegal, but to conspire to prevent a single shipment by a competitor is. Patterson v. United States (Cash Register Case) 222 Fed. 599, 146 C. C. A. 557. Illegal to fix price of resale. United States v. Kellogg Toasted Corn Flake Co., 222 Fed. 725. Photo-play films shipped in interstate commerce subject to the act. United States v. Motion Picture Patents Co., 225 U. S. 800. Kodak company decreed a trust. United States v. Eastman Kodak Co., 226 Fed. 62. Coal monopoly. United States v. Reading Co., 226 Fed. 229.

**Notes of Decisions Rendered Since 1909.**

See notes next preceding section.

§ 488. **Prohibition Applies to Territories and between States and Territories.**—Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such territory and another, or between any such territory or territories and any state or states or the District of Columbia, or with foreign nations, or between the District of Columbia and any state or states or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor and on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Section three of the Act July 2, 1890, known as the Sherman Anti-Trust Act.

Prosecution begun in a territorial court abates upon the admission of the territory as a state. Moore v. United States, 85 Fed. 465, 29 C. C. A. 269, 1 Fed. Anti-Trust Dec. 815.

§ 489. **Courts Given Jurisdiction to Enjoin Violation of Act.** —The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Section four of the Act July 2, 1890, known as the Sherman Anti-Trust Act.

Preliminary injunction not granted when bill denied. United States v. Jellico Mountain Coke & Coal Co., 43 Fed. 898, 1 Fed. Anti-Trust Dec. 1. Right to injunction exists only in favor of the government, but to prevent a multiplicity of suits an individual may sue for and obtain an injunction. Blindell v. Hagan, 54 Fed. 40, 1 Fed. Anti-Trust Dec. 106. Affirmed. Hagan v. Blindell, 56 Fed. 696, 6 C. C. A. 86, 1 Fed. Anti-Trust Dec. 182. Injunction may be granted against a combination of laborers. United States v. Workingman's Amalg. Council, 54 Fed. 994, 26 L. R. A. 158, 1 Fed. Anti-Trust Dec. 110. Affirmed. Workingman's Amalg. Council v. United States, 57 Fed. 85, 6 C. C. A. 258, 1 Fed. Anti-Trust Dec. 184. Injunction order binding on one not named in the bill or served with *subpoena* if served with injunction order. United States v. Alger, 62 Fed. 824, 1 Fed. Anti-Trust Dec. 294. May sue in any district where defendant found. Dueber Watch-Case Mfg. Co. v. Howard Watch &

Clock Co., 66 Fed. 637, 14 C. C. A. 14, 1 Fed. Anti-Trust Dec. 421. Section not void. United States v. Elliott, 64 Fed. 27, 1 Fed. Anti-Trust Dec. 311. The combination described not illegal and federal courts cannot enjoin an alleged violation of this act or the act to regulate commerce. United States v. Joint Traffic Asso., 76 Fed. 895, 1 Fed. Anti-Trust Dec. 615. Affirmed. 89 Fed. 1020, 32 C. C. A. 491, 45 U. S. App. 726, 1 Fed. Anti-Trust Dec. 869. Reversed on both points following the Trans-Missouri Freight Asso. Case *supra*. Same style case, 171 U. S. 505, 43 L. Ed. 259, 19 Sup. Ct. 25, 1 Fed. Anti-Trust Dec. 869. Applies only to suits by the government. Greer, Mills & Co. v. Stoller, 77 Fed. 1, 1 Fed. Anti-Trust Dec. 620. Suits by the United States rest only on the authority of the act. United States v. Addyston Pipe & Steel Co., 78 Fed. 712, 1 Fed. Anti-Trust Dec. 631. Reversed, holding a bill for injunction would lie in favor of either the government or a private individual. 85 Fed. 271, 46 L. R. A. 122, 1 Fed. Anti-Trust Dec. 772. Affirmed. Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 44 L. Ed. 136, 20 Sup. Ct. 96, 1 Fed. Anti-Trust Dec. 1009. Restraining order may issue without notice. United States v. Coal Dealers' Asso., 85 Fed. 252, 1 Fed. Anti-Trust Dec. 749. Principles upon which injunction should be granted stated in a case growing out of United States v. Northern Securities Co. Case. Harriman v. Northern Securities Co., 132 Fed. 464, 2 Fed. Anti-Trust Dec. 587. Reversed. Northern Securities Co. v. Harriman, 134 Fed. 331, 67 C. C. A. 245, 2 Fed. Anti-Trust Dec. 618. Circuit court of appeals affirmed, holding that property delivered under an executed contract of sale cannot be recovered by one in *pari delicto*. Harriman v. Northern Securities Co., 197 U. S. 244, 49 L. Ed. 739, 25 Sup. Ct. 493, 2 Fed. Anti-Trust Dec. 669. Prior to Elkins Act, Feb. 19, 1903, a circuit court had no jurisdiction to enjoin the granting of rebates, although the giving of the rebate was alleged to be in violation of Anti-Trust Act. United States v. Atchison, T. & S. F. Ry. Co., 142 Fed. 176, 2 Fed. Anti-Trust Dec. 831. Private parties may obtain an injunction against a violation from which they suffer special injury. Bigelow v. Calumet & Hecla Mining Co., 155 Fed. 869, 167 Fed. 704. Affirmed, not discussing this point, 167 Fed. 721, 94

C. C. A. 13. Same rule under a state law. Continental Securities Co. v. Interborough R. T. Co., 165 Fed. 945.

**Notes of Decisions Rendered Since 1909.**

Violations of an injunction decree punished. U. S. v. Southern Wholesale Grocers' Ass'n, 207 Fed. 434. Injunctive relief can be granted only at the suit of the government. Irving v. Neal, 209 Fed. 471; National Fireproofing Co. v. Masons' Builders' Ass'n, 169 Fed. 259, 94 C. C. A. 535, 26 L. R. A. (N. S.) 148; Greer v. Staller, 77 Fed. 1; Minnesota v. North Security Co., 194 U. S. 48, 48 L. Ed. 870, 24 Sup. Ct. 598; Paine Lumber Co. v. Neal, 212 Fed. 259; Paine Lumber Co. v. Neal, 214 Fed. 82, 130 C. C. A. 522, but said the court in 212 Fed. 259, 268 *supra*: "The courts have time and again extended the equity arm to prevent the commission or continuance of injury directed against particular persons, and have protected employers against violence and sympathetic strikes." See also Jones v. Van Winkle, 131 Ga. 336, 62 S. E. 236, following Irving v. Neal & Lawler Co. v. Neal *supra*: Gill Engraving Co. v. Doerr, 214 Fed. 111, 118; Mitchell v. Hitchman Coal & Coke Co., 214 Fed. 685, 714. One who has in good faith withdrawn from the conspiracy not a proper party. U. S. v. E. I. Dupont De Nemours & Co., 188 Fed. 127. Proper parties to suit for injunction discussed. U. S. v. Reading Co., 226 U. S. 324, 57 L. Ed. 243, 33 Sup. Ct. 90, citing, Simpkins Fed. Suit 290 *et seq.* and modifying same styled case, 183 Fed. 427. See also same case, 228 U. S. 158, 57 L. Ed. 779, 33 Sup. Ct. 509, see also 188 Fed. 127 *supra*.

§ 490. **Practice with Reference to Parties and Service of Subpœna Thereon.**—Whenever it shall appear to the court before which any proceeding under section four of this act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and *subpœnas* to that end may be served in any district by the marshal thereof.

Section five of the Act July 2, 1890, known as the Sherman Anti-Trust Act.

Injunction order may be enforced against defendants, within the scope of the order, though not named in the bill, such defendants being parties to the conspiracy. United States v. Elliott, 64 Fed. 27, 1 Fed. Anti-Trust Dec. 311. Cannot bring in non-residents of the district at suit by others than the government. Greer, Mills & Co. v. Stoller, 77 Fed. 1, 1 Fed. Anti-Trust Dec. 620. Non-residents of the state may be brought in as defendants. United States v. Standard Oil Co. of New Jersey, 152 Fed. 290; United States v. Virginia-Carolina Chemical Co., 163 Fed. 66; Northern Pac. R. Co. v. Pacific C. L. Mfg. Asso., 165 Fed. 1, 9, 91 C. C. A. 39.

§ 491. **Property Owned under a Contract Violating This Act being in Course of Interstate Transportation May Be Seized and Forfeited.**—Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one state to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

Section six of Act July 2, 1890, known as the Sherman Anti-Trust Act.

No seizure can be had of goods at the suit of the United States except of property imported into the United States contrary to act. United States v. Addyston Pipe & Steel Co., 85 Fed. 271, 29 C. C. A. 141, 46 L. R. A. 122, 1 Fed. Anti-Trust Dec. 772. Affirmed, without discussion of the question. Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 44 L. Ed. 136, 20 Sup. Ct. 96, 1 Fed. Anti-Trust Dec. 1009.

§ 492. **Measure of Damages in Favor of Persons Injured.**—Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three-

fold the damages by him sustained, and the costs of suit including a reasonable attorney's fee.

Section seven of Act July 2, 1890, known as the Sherman Anti-Trust Act.

A person who has sold his business to an illegal combination cannot recover under this act. In suits for damages complaint must allege that the matters out of which the suit grows constitute interstate commerce. Bishop v. Am. Preservers' Co., 51 Fed. 272, 1 Fed. Anti-Trust Dec. 49. Must not only allege that the business damaged was interstate commerce but that the entire market was controlled. Dueber Watch Case Mfg. Co. v. Howard Watch & Clock Co., 55 Fed. 851, 1 Fed. Anti-Trust Dec. 178. Affirmed, same style case, 66 Fed. 637, 14 C. C. A. 14, 1 Fed. Anti-Trust Dec. 421. The private shipper cannot obtain a mandatory writ to compel the carrier to grant a right, though a circuit court, as a court of equity, can afford preventative relief in addition to damages. Gulf C. & S. F. Ry. Co. v. Miami S. S. Co., 86 Fed. 407, 421, 30 C. C. A. 142, 1 Fed. Anti-Trust Dec. 823, 842, 843. Remedy for damages exclusive and a private person cannot maintain equitable proceedings to enforce the law. So. Ind. Express Co. v. United States Express Co., 88 Fed. 659, 1 Fed. Anti-Trust Dec. 862. Affirmed. 92 Fed. 1022, 35 C. C. A. 172, 1 Fed. Anti-Trust Dec. 992; Block v. Standard Distilling and Distributing Co., 95 Fed. 978, 1 Fed. Anti-Trust Dec. 993. Limitation of time in which to bring suit is governed by the law of the state in which suit is brought. Atlanta v. Chattanooga Foundry & Pipe Co., 101 Fed. 900, 2 Fed. Anti-Trust Dec. 11. Reversed, same style case, 127 Fed. 23, 61 C. C. A. 387, 64 L. R. A. 721, 2 Fed. Anti-Trust Dec. 299. Affirmed. Chattanooga Foundry & Pipe Co. v. Atlanta, 203 U. S. 390, 51 L. Ed. 241, 27 Sup. Ct. 65. To recover must not only show illegal combination but that plaintiff has suffered damages, that a combination of dealers sent out circulars denouncing a dealer outside the combination who sold in other states whereby his business is injured authorized a recovery. Gibbs v. McNeely, 102 Fed. 594, 2 Fed. Anti-Trust Dec. 25. No recovery for sales in the state. Same case, 107 Fed. 210, 2 Fed. Anti-Trust Dec. 71. Reversed, same case, 118 Fed. 120, 55 C. C. A. 70, 60

L. R. A. 152, 2 Fed. Anti-Trust Dec. 194, holding that though an agreement does not refer to interstate trade, it is within the act if its purpose and effect is to restrain such trade. A party to an illegal combination cannot recover damages against the combination for acts growing out of the contract creating the combination. Bishop v. American Preservers' Co., 105 Fed. 845, 1 Fed. Anti-Trust Dec. 51. Damages recoverable and attorney's fees in discretion of trial court. Lowry v. Tile Mantel & Grate Asso., 106 Fed. 38, 2 Fed. Anti-Trust Dec. 53. Affirmed. Montague v. Lowry, 115 Fed. 27, 52 C. C. A. 621, 2 Fed. Anti-Trust Dec. 112, 193 U. S. 38, 48 L. Ed. 608, 24 Sup. Ct. 307, 2 Fed. Anti-Trust Dec. 327. A minority stockholder, alleging the corporation has transferred its property to an illegal combination, cannot obtain an injunction against the transfer and damages in the same suit. Metcalf v. American School Furniture Co., 108 Fed. 909, 2 Fed. Anti-Trust Dec. 75. Affirmed. 113 Fed. 1020, 51 C. C. A. 599, 2 Fed. Anti-Trust Dec. 11. Bill dismissed. 122 Fed. 115, 2 Fed. Anti-Trust Dec. 234. Only actual damages can be recovered. Rule as to loss of profits stated. Central Coal & Coke Co. v. Hartman, 11 Fed. 96, 49 C. C. A. 244, 2 Fed. Anti-Trust Dec. 94. Damages cannot be recovered because a company refuses to sell its goods, unless the purchaser refuses to deal with independent companies, the defendant owing no duty to sell its products to plaintiff. Whitwell v. Continental Tob. Co., 125 Fed. 454, 60 C. C. A. 290, 64 L. R. A. 689, 2 Fed. Anti-Trust Dec. 271. Petition for damages must definitely describe the combination and conspiracy. Rice v. Standard Oil Co., 134 Fed. 464, 2 Fed. Anti-Trust Dec. 633. Rule as to measure of damages and burden of proof. Loder v. Jayne, 142 Fed. 1010, 2 Fed. Anti-Trust Dec. 976. Reversed. Jayne v. Loder, 149 Fed. 21, 78 C. C. A. 653, 7 L. R. A. (N. S.) 984. In a suit for damages under this section, the allegations should be specific. Cilley v. United Shoe Mach. Co., 152 Fed. 726. One who is harmed in business or property may recover. Wheeler-Stenzel Co. v. National Window Glass Jobbers' Asso., 152 Fed. 864, 81 C. C. A. 658. A purchase of a competing refining company in order to monopolize the refining of sugar not illegal. Penn. Sugar Refining Co. v. American Sugar Refining Co., 160 Fed. 144. Reversed, same style case, 166 Fed.

254, 92 C. C. A. 318. No right of action when merely prevented from embarking on a new business. American Banana Co. v. United Fruit Co., 160 Fed. 184. Affirmed, same style case, 166 Fed. 261, 92 C. C. A. 325, 213 U. S. 347, 53 L. Ed. 826, 29 Sup. Ct. 511. Allegation held sufficient. Monarch Tob. Works v. American Tob. Co., 165 Fed. 774. Limitation law of the state in which suit is brought applies. Chattanooga Foundry & Pipe Works v. Atlanta, 203 U. S. 390, 51 L. Ed. 241, 27 Sup. Ct. 65.

**Notes of Decisions Rendered Since 1909.**

Remedy of a private individual is by suit for damages. National Fire Proofing Co. v. Mason Builders' Ass'n, 169 Fed. 259, 94 C. C. A. 535 and cases following that case. Sec. 803 *supra*. Pleadings liberal in suits for damages. Ware-Kramer Tobacco Co. v. Am. Tob. Co., 178 Fed. 117; Hale v. O'Connor Coal Supply Co., 181 Fed. 267.

That one of the purposes of the conspiracy is to increase rates the reasonableness of which has not been passed on by the Interstate Commerce Commission is no defense. Meeker v. Lehigh Valley R. Co., 183 Fed. 548, 106 C. C. A. 94, reversing Meeker v. Lehigh V. R. Co., 175 Fed. 320. The right of action for causing bankruptcy of a corporation is in its trustee in bankruptcy, not in a stockholder. Loeb v. Eastman Kodak Co., 183 Fed. 704, 106 C. C. A. 142; Corey v. Independent Ice Co., 207 Fed. 459; Fleitmann v. United Gas Improvement Co., 211 Fed. 103.

Facts here pleaded state a cause of action and the remedy given by the act is a civil remedy. Strout v. United Shoe Machinery Co., 195 Fed. 313, same style case, 202 Fed. 602.

What must be alleged and proved. Buckeye Powder Co. v. E. I. Du Pont De Nemours Powder Co., 196 Fed. 514.

Alleging different things forbidden by Sections 1 and 2 constitutes duplicitous pleading. Cilley v. Shoe Mach. Co., 202 Fed. 598. Facts here sufficient to entitle a jury to pass thereon. Hale v. Hatch & North Coal Co., 204 Fed. 433, 122 C. C. A. 619. Specific injury must be proved. Motion Picture Patents Co. v. Eclair Film Co., 208 Fed. 416. Charge of the court to the jury discussed. Loewe v. Lawlor, 209 Fed. 721, 126 C. C. A. 445. Affirmed Lawlor v. Loewe, 236 U. S. 522, 59 L.

Ed. 341, 35 Sup. Ct. 170. Damages may be recovered although some of the business affected is intrastate commerce and although the parties to the conspiracy are not themselves engaged in interstate commerce. Loewe v. Lawlor, 208 U. S. 274, 52 L. Ed. 488, 28 Sup. Ct. 301, and see Loewe v. Lawlor, 209 Fed. 721, 126 C. C. A. 445, same styled case, 187 Fed. 522, 109 C. C. A. 288, writ of certiorari denied. Loewe v. Lawlor, 223 U. S. 729, 56 L. Ed. 633, 32 Sup. Ct. 527, and notes in L. R. A. (N. S. ) 97, 23 L. R. A. (N. S.) 1263, 26 L. R. A. (N. S.) 153, 1 Brit. Rul. Cas. 281.

**Notes of Decisions Rendered Since 1915.**

When the general plan is an illegal combination affecting interstate commerce, it is not material that parts of the plan involve only intrastate commerce; and all persons privy to the general plan, although executing only parts thereof, are proper parties in a suit for damages. Marienelli v. United Booking Offices, 227 Fed. 165. Cause of action assignable and survives the death of the tort feasor. United Copper Securities Co. v. Amalgamated Copper Co., 232 Fed. 574, 146 C. C. A. 532. Cause of action not assignable and does not pass to a trustee in bankruptcy. Bonvillain v. American Sugar Refining Co., 250 Fed. 641. See also Imperial Film Exchange v. General Film Co., 244 Fed. 985, and General Film Co. v. Sampliner, 252 Fed. 443; affirmed 255 Fed. 242, — C. C. A. —, rehearing denied 259 Fed. 152 — C. C. A. —. Appeal in *forma pauperis* denied, — U. S. —, 63 L. Ed. —, 39 Sup. Ct. —. Venue stated under both Sherman and Clayton Acts. Southern Photo Material Co. v. Eastman Kodak Co., 234 Fed. 955. Damages, when recoverable in suits against labor unions. Dowd v. United Mine Workers, 235 Fed. 1, 148 C. C. A. 495. One who participated or acquiesced in a violation of the statute cannot recover damages. Bluefields S. S. Co. v. United Fruit Co., 243 Fed. 1, 155 C. C. A. 531. Appeal to the supreme court dismissed on stipulation. 248 U. S. 595, 63 L. Ed. —, 39 Sup. Ct. 136. Sherman law does not authorize recovery of damages for unfair practices, but only for monopolizing or attempting to monopolize. American Steel Co. v. American Steel & Wire Co., 244 Fed. 300 What allegations are necessary in a suit under this section. Noyes

v. Parsons, 245 Fed. 689, 158 C. C. A. 91. Must show special injury. Ketchum v. Denver & R. G. R. Co., 248 Fed. 106, 160 C. C. A. 246. Can sue where defendant has an office and is doing business. Venner v. Penn. Steel Co., 250 Fed. 292. Parties and pleadings discussed. McLatchy v. King, 250 Fed. 920. A shipper who pays an excessive freight rate as a result of a violation of the act may recover the amount that the rate paid exceeded a reasonable rate. Thomsen v. Cayser, 243 U. S. 66, 61 L. Ed. 597, 37 Sup. Ct. 353. Decree prior to enactment of Clayton Act adjudging defendant guilty under the Sherman Act not admissible in a suit under this section. Buckeye Powder Co. v. Dupont de Nemours Powder Co., 248 U. S. 55, 63 L. Ed. —, 39 Sup. Ct. —.

In United States v. Colgate & Co., 250 U. S. 300, 63 L. Ed. 570, 39 Sup. Ct. 465 the Supreme Court said: "The purpose of the Sherman Act is to prohibit monopolies, contracts, and combinations which probably would unduly interfere with the free exercise of their rights by those engaged, or who wish to engage, in trade and commerce, —in a word, to preserve the right of freedom to trade. In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long recognized right of trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal. And, of course, he may announce in advance the circumstances under which he will refuse to sell. 'The trader or manufacturer, on the other hand, carries on an entirely private business, and may sell to whom he pleases.' United States v. Trans-Missouri Freight Asso., 166 U. S. 290, 320, 41 L. Ed. 1007, 17 Sup. Ct. Rep. 540. 'A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself, and may do so because he thinks such dealer is acting unfairly in trying to undermine his trade.' Eastern States Retail Lumber Dealers' Asso. v. United States, 234 U. S. 600, 614, 58 L. Ed. 1490, 1500, L. R. A. 1915A, 788, 34 Sup. Ct. 951."

In United States v. Schrader, 251 U. S. —, 64 L. Ed. —, 40 Sup. Ct. —, the court held that a definite contract fixing resale prices was unlawful. The Colgate case dealt with a refusal to sell, which right to sell or refuse to sell exists

for any or no reason; the Schrader case dealt with a contract which restrained competition.

§ 493. **Person Includes Corporation and Association.**—That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country.

Section eight of the Act of July 2, 1890, known as the Sherman Anti-Trust Act.

Corporations may be indicted. United States v. MacAndrews & Forbes Co., 149 Fed. 823, 836.

For discussion of meaning of "person" and "persons" see Dowd v. United Mine Workers of America, 235 Fed. 1, 148 C. C. A. 495.

§ 494. **Act of August 28, 1894, So Far as It Relates to Trusts and Combinations in Restraint of Trade.**—Sec. 73. That every combination, conspiracy, trust, agreement, or contract, is hereby declared to be contrary to public policy, illegal, and void, when the same is made by or between two or more persons or corporations either of whom as agent or principal is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and, on conviction thereof in any court of the United States, such person shall be fined in a sum not less than one hundred dollars and not exceeding five thousand dollars, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

Sec. 74. That the several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of section seventy-three of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Sec. 75. That whenever it shall appear to the court before which any proceeding under the seventy-fourth section of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas to that end may be served in any district by the marshal thereof.

Sec. 76. That any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section seventy-three of this act, imported into and being within the United States or being in the course of transportation from one state to another, or to or from a territory, or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

Sec. 77. That any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

* * * * * * * * *

Received by the President, August 15, 1894.

(*Note by the Department of State.*—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the house of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.)

*Act of July 24, 1897, § 34.*

* * * * And provided further, that nothing in this act shall be construed to repeal or in any manner affect the sections numbered 73, 74, 75, 76 and 77 of an act entitled "An act to reduce taxation, to provide revenue for the government, and for other purposes," which became a law on the twenty-eighth day of August, 1894.

Section 73 and 76 quoted in the section above were amended by the act of Feb. 12, 1913, 37 Stat. 667, Chap. 40, by adding to Sec. 73 the words "as" agent or "principal" and to Sec. 76 the words "imported into and being within the United States." Section 11 of the Panama Canal Act, Act Aug. 24, 1912, 37 Stat. 560, 567, Chap. 390, provides: "No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through said canal, if such ship is owned, chartered or operated, or controlled by any person or company which is doing business in violation of any of the anti-trust acts" and "The question of fact may be determined by the judgment of any court of the United States of competent jurisdiction in any cause pending before it to which the owners or operators of such ships are parties. Suit may be brought by any shipper or by the Attorney-General of the United States."

§ 495. **Clayton Act—Definitions.**—That "anti-trust laws," as used herein, includes the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an act entitled "an act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-

seventh, eighteen hundred and ninety-four; an act entitled "An act to amend sections seventy-three and seventy-six of the act of August twenty-seventh, eighteen hundred and ninety-four, entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," approved February twelfth, nineteen hundred and thirteen; and also this act.

"Commerce," as used herein, means trade or commerce among the several states and with foreign nations, or between the District of Columbia or any territory of the United States and any state, territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any state or territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any territory or any insular possession or other place under the jurisdiction of the United States: *Provided,* That nothing in this act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country.

Section one of Clayton Act approved Oct. 15, 1914, 38 Stat. 730 *seq.*, Public No. 212, 63rd Congress. Completed Statutes 1916, section 8835a *seq.*

§ 496. **Price Discrimination Prohibited.**—That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided,* That nothing herein contained shall prevent discrimination in

price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in *bona fide* transactions and not in restraint of trade.

Sec. 2 Clayton Act.

**Notes of Decisions Rendered Since 1915.**

Prior action by Federal Trade Commission not a *sine qua non* to a suit for unlawfully maintaining price discriminations. Frey & Son v. Cudahy Packing Co., 232 Fed. 640, and see same case, 228 Fed. 209, 243 Fed. 205, and reversed 261 Fed. 65.

Act discussed, no duty to sell goods to a particular person. Atlantic & Pacific Tea Co. v. Cream of Wheat Co., 224 Fed. 566, 227 Fed. 46.

§ 497. **Lease or Sale of Patented Articles.**—That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may substantially lessen competition or tend to create a monopoly in any line of commerce.

Sec. 3 Clayton Act.

**Notes of Decisions Rendered Since 1915.**

The statute applies to contracts made before its enactment. Elliott Mach. Co. v. Center, 227 Fed. 124. Case cited and followed, United States v. United States Show Mach. Co., 227 Fed. 507, 510. Reversed without prejudice 232 Fed. 1023; and Motion Picture Patents Co. v. Universal Film Mfg. Co., 235 Fed. 398, 401, 148 C. C. A. 660, 243 U. S. 502, 61 L. Ed. 871, 37 Sup. Ct. 416, L. R. A. 1917E, 1187 Ann. Cas. 1918A 959 and cases cited. To appoint an exclusive selling agent and to refuse to sell to those who do not maintain fixed resale prices does not violate the law. Baran v. Goodyear Tire & Rubber Co., 256 Fed. 570, 571. Contract requiring purchasers even of patented articles, to maintain fixed resale prices illegal. Motion Picture Patents Co. Case *Supra;* Straus v. Victor Talking Machine Co., 243 U. S. 490, 61 L. Ed. 866, 37 Sup. Ct. 412. Boston Store v. American Graphophone Co., 246 U. S. 8, 62 L. Ed. 551, 38 Sup. Ct. 258. See a discussion of the general question prior to Clayton Law in note 46 L. Ed. 1058 and for late cases see annotations to section 487, *supra.* Facts insufficient to show unlawful restraint of trade by patentee. United States v. United Show Mach. Co., 247 U. S. 32, 62 L. Ed. 968, 38 Sup. Ct. 473. See also same or related cases, 222 Fed. 349, 227 Fed. 507, 232 Fed. 1023, 234 Fed. 127. An agreement by buyer to sell only sellers goods violates section. Standard Fashion Co. v. Magrane Houston Co., 259 Fed. 793, see same case 251 Fed. 559, 163 C. C. A. 553. Notice that buyer must maintain sellers resale prices under penalty of not being permitted again to buy from seller not unlawful. United States v. Colgate & Co., 250 U. S. 300, 39 Sup. Ct. 465, 64 L. Ed. —, Cudahy Packing Co. v. Frey & Son, 261 Fed. 65, — C. C. A. —. Trading stamps not unlawful. Sperry & Hutchinson Co. v. Fenster, 219 Fed. 759.

§ 498. **Damages May Be Recovered by Person Injured.**—That any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and

shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Sec. 4 Clayton Act. Cited Buckeye Powder Co. v. E. I. Du Pont de Nemours Powder Co., 223 Fed. 881, 884.

**Notes of Decisions Rendered Since 1915.**

Suit may be brought although the Federal Trade Commission has taken no action. Frey & Son v. Cudahy Packing Co., 232 Fed. 640. Same case, 243 Fed. 205, 261 Fed. 65 holding that recovery can be for those items only which arose before the date of filing the suit.

§ 499. **Effect of Final Judgments in Criminal Prosecution and Equity Suits.**—That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the anti-trust laws to the effect that a defendant has violated said laws shall be *prima facie* evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties therton: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the anti-trust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

Sec 5 Clayton Act.

Section does not affect prior proceedings. Buckeye Powder Co. v. Dupont de Nemours Powder Co., 248 U. S. 55, 63 L. Ed. —, 39 Sup. Ct. 38.

§ 500. **Labor Not a Commodity.**—That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agriculture, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

Sec. 6 Clayton Act.

**Notes of Decisions Rendered Since 1915.**

Indirectly bearing on this section, held "Secondary boycott" by dealers illegal. United States v. King, 229 Fed. 275. Same case, 250 Fed. 908 holding that labor and farm organizations may not adopt business methods not lawful to other associations. But see Duplex Printing Press Co. v. Deering, 252 Fed. 722. An association of master plumbers held to be an illegal combination under the Sherman Law. Knauer v. United States, 237 Fed. 8. See also notes to Sec. 517, *post* and notes of decisions before passage of the Clayton Act, U. S. Comp. Stat. 1916, Vol. 8, pp 9686-9688.

§ 501. **Acquisition by a Corporation of Stock in Another Corporation, When Prohibited.**—That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor branch line so constructed and the company owning the main to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired; *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the anti-trust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Sec. 7 Clayton Act.

**Notes of Decisions Rendered Since 1915.**

Acquirement of stock held violative of this section. United States v. New England Fish Exchange, 258 Fed. 732, but not so when the stockholding company is in the nature of a selling agency. Niles-Bement-Pond Co. v. Iron Moulder's Local No. 68, 246 Fed. 851.

§ 502. **Interlocking Directorates, When Prohibited.**—That from and after two years from the date of the approval of this act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company, organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than $5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a state, having deposits, capital, surplus, and undivided profits aggregating more than $5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the offical statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual saving banks not having a capital stock represented by shares: *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any state where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid a director of class A of a federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank.

That from and after two years from the date of the approval of this act no person at the same time shall a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location or operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the anti-trust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions

of this act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be effected, and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

Sec. 8 Clayton Act.

§ 503. **Punishment of Corporate Officers.**—Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or wilfully misapplies, or wilfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or wilfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than $500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several states under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any state shall be a bar to any prosecution hereunder for the same act or acts.

Section 9 Clayton Act.

§ 504. **Certain Contracts of Common Carriers Must Be Let by Competitive Bids.**—That after two years from the approval of this act no common carrier engaged in commerce shall have any dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent any one from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said Commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its

own views or findings regarding the transactions to the Attorney-General.

If any common carrier shall violate this section it shall be fined not exceeding $25,000; and every such director, agent, manager or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding $5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

Section 10 Clayton Act.

See Section 480b, *ante*.

The effective date of this section has been extended by the amendment of March 28, 1920, Transportation Act, 1920 section 501 to January 1, 1921, except as to corporations organized since Jany. 12, 1918.

§ 505. **Authority to Enforce Certain Provisions of Act Vested in Interstate Commerce Commission, Federal Reserve Board and Federal Trade Commission.**—That authority to enforce compliance with sections two, three, seven, and eight of this act by the persons respectively subject thereto is hereby vested; in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Par. 1, Sec. 11 Clayton Act.

Prior action by Commission or Board not always necssary. Frey & Son v. Cudahy Packing Co., 232 Fed. 640, 243 Fed. 205.

§ 506. **Procedure for Hearings by Boards Vested with Jurisdiction under Act.**—Whenever the Commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of section two, three, seven and eight of this act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hear-

ing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the Commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission or board. If upon such hearing the Commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the Commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

Par. 2, Sec. 11 Clayton Act.

§ 507. **Effect of the Orders of Boards.**—If such person fails or neglects to obey such order of the Commission or board while the same is in effect, the Commission or board may apply to the circuit court of appeals of the United States, with in any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission or board. Upon such

filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission or board. The findings of the Commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission or board, the court may order such additional evidence to be taken before the Commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon *certiorari* as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the Commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the Commission or board be set aside. A copy of such petition shall be forthwith served upon the Commission or board, and thereupon the Commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission or board as in the case of an application by the Commission or board for the enforce-

ment of its order, and the findings of the Commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

Parapraphs 3 and 4 Section 11 Clayton Act.

§ 508. **Judicial Proceedings to Enforce the Orders of the Boards.**—The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the Commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the Commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the Anti-Trust Acts.

Complaints, orders, and other processes of the Commission or board under this section may be served by anyone duly authorized by the Commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return postoffice receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of same.

Paragraphs 5 to 7 Sec. 11 Clayton Act.

§ 509. **Venue of Suits.**—That any suit, action, or proceeding under the anti-trust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all processes in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Section 12 Clayton Act.

**Notes of Decisions Rendered Since 1915.**

Venue of suits somewhat different in Sherman and Clayton Acts. Southern Photo Material Co. v. Eastman Kodak Co., 234 Fed. 955.

§ 510. **Attendance of Witnesses.**—That in any suit, action or proceeding brought by or on behalf of the United States subpœnas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the anti-trusts laws may run into any other district: *Provided*, That in civil cases no writ of subpœna shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without permission of the trial court being first had upon proper application and cause shown.

Sec. 13 Clayton Act.

§ 511. **Guilt of Corporation Deemed Guilt of Officers.**—That whenever a corporation shall violate any of the penal provisions of the anti-trust laws, such violation shall be deemed. to be also that of the individual directors, officers or agents of such corporation who shall have authorized, ordered or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction thereof of any such director, officer, or agent he shall be punished by a fine of not exceeding $5,000 or by imprisonment for not exceeding one year. or by both, in the discretion of the court.

Sec. 14 Clayton Act.

§ 512. **District Courts Invested with Jurisdiction to Prevent Violations of the Act.**—That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When

the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpœnas to that end may be served in any district by the marshal thereof.

Sec. 15 Clayton Act.

State courts have no jurisdiction under this section. Verner v. New York C. & H. R. Co., 158 N. Y. S. 602, 94 Misc. Ref. 671, 164 N. Y. S. 626, 177 App. Div. 296. Section cited, Wainwright v. Penn. R. Co., 253 Fed. 459.

§ 513. **Private Persons May Obtain Injunctive Relief, When**—That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the anti-trust laws, including sections, two, three, seven and eight of this act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Sec. 16 Clayton Act.

**Notes of Decisions Rendered Since 1915.**

The right granted by this section does not exist under the Sherman Law. Union Pac. R. Co. v. Frank, 226 Fed. 906, 141 C. C. A. 510, cited and followed, Ketchum v. Denver & R. G. R. Co., 248 Fed. 106, 160 C. C. A. 246. Rights of minority stockholders under Sherman Law. Geddes v. Anaconda Copper Mining Co., 245 Fed. 225, 157 C. C. A. 417. Preventive relief only authorized by this section. Verner v. Penn. Steel Co., 250 Fed. 292; McLatchy v. King, 250 Fed. 920; Fleitmann v. Welsbach Co., 240 U. S. 27, 60 L. Ed. 505, 36 Sup. Ct. 233. See also annotations to section 512, *supra*.

§ 514. **Procedure in the Issuance of Temporary Restraining Orders.**—That no preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party ob-

taining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

Section two hundred and sixty-three of an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Sec. 17 Clayton Act.

§ 515. **Security before Issuing Restraining Orders When Required.**—That, except as otherwise provided in section 16 of this act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Sec. 18 Clayton Act.

§ 516. **What Injunction Orders Shall Contain.**—That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Sec. 19 Clayton Act.

§ 517. **Injunctions in Suits between Employer and Employee.**—That no restraining order or injunction shall be

granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to partronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Sec. 20 Clayton Act.

It will be noted that this section is by its terms limited to cases between "employer and employees" or persons seekink employment, and then only when the case does not involve irreparable injury to property or to a property right. Par. 2 of the Section permits the doing of certain acts which some courts have held to be illegal. See 486 *supra*.

**Notes of Decisions Rendered Since 1915.**

Unlawful violence by trade unions may be enjoined notwithstanding this section. Alaska S. S. Co. v. International Longshoremen's Asso., 236 Fed. 964; Kroger Grocery & Baking Co. v. Retail Clerks, 250 Fed. 890; Dowd v. United Mine Workers of Am., 235 Fed. 1, 148 C. C. A. 495. Contra, Puget Sound Traction etc. Co. v. Whitley, 243 Fed. 945. Quoting the section Judge Sanborn in United States v. Norris, 255 Fed. 423, 424 says: "The strike in this case had nothing to do with a dispute over wages, as the jury found; so the Clayton Act is entirely inapplicable. I think that section 20 was intended to legalize lawful strikes, and peaceful, lawful persuasion of workmen. The orders which were issued to workmen in this case were dishonest and corrupt, and they were given no reason for their ceasing work. The statute has no application to such a situation. The Sherman Act is thus left in full force in cases like this. The Clayton Act does not authorize molestation of employees by strikers. Kroger Grocery, etc., Co. v. Retail, etc., Co., (D. C.) 250 Fed. 890."

See annotations to section 500 above.

§ 518. **Disobedience of Orders of Court.**—That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any state in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

Sec. 21 of Clayton Act.

§ 519. **Same Subject, Procedure Prescribed.**—That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any

person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,* That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

Par. 1, Sec. 22 Clayton Act.

§ 520. **Right to a Trial by Jury Provided for.**—In all cases within the purview of this act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or

apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months: *Provided,* That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Paragraphs 2 and 3 Sec. 22 Clayton Act.

The use of the word demand would seem to give an absolute right of trial by jury, and the only discretion left to the judge is to decide whether the jury shall be impaneled from "jurors then in attendance" or from others "to be selected and summoned."

§ 521. **Review of Convictions for Violation of Court Orders.**—That the evidence taken upon the trial of any person so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Section 23 Clayton Act.

§ 522. **Provision for Trial for Disobedience to Orders of Court Not Applicable to Contempt Committed in the Presence of the Court.**—That nothin herein contained shall be construed to relate to contempts committed in the presence of

the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this act, may be punished in conformity to the usages at law and in equity now prevailing.

Sec. 24 Clayton Act.

§ 523. **Limitation in Proceedings for Contempt.**—That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this act.

Sec. 25 Clayton Act.

§ 524. **That Part of the Act Invalid, Not to Affect Validity of Other Portions.**—That if any clause, sentence, paragraph, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 26 Clayton Act.

§ 525. **Dumping Prohibited.**—A manufacturer by making or selling a certain quantity of goods at a fixed price may earn a fair return on his investment and for his services. Additional goods manufactured may be sold at cost. This sale of a surplus at cost or less is called dumping, and is generally considered unfair competition. Congress has passed an anti-dumping law. (See Appendix A. *post.*)

## *APPENDIX ONE.*

## FEDERAL CONTROL.

The first step in Federal Control of railways was the enactment of a provision in the Appropriation Act of August 29, 1916. The provision is quoted in the proclamation following.

## A PROCLAMATION.

Whereas the Congress of the United States, in the exercise of the constitutional authority vested in them, by joint resolution of the Senate and House of Representatives bearing date April 6, 1917, resolved:

That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination all of the resources of the country are hereby pledged by the Congress of the United States.

And by joint resolution bearing date of December 7, 1917, resolved:

That a state of war is hereby declared to exist between the United States of America and the Imperial and Royal Austro-Hungarian Government; and that the President be, and he is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial and Royal Austro-Hungarian Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States.

And whereas it is provided by section 1 of the act approved August 29, 1916, entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes," as follows:

The President in time of war is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same to the exclusion, as far as may be necessary, of all other traffic thereon, for the transfer or transportation of troops, war material, and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

And whereas it has now become necessary in the national defense to take possession and assume control of certain systems of transportation and to utilize the same, to the exclusion, as far as may be necessary, of other than war traffic thereon, for the transportation of troops, war material, and equipment therefor, and for other needful and desirable purposes connected with the prosecution of the war;

Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolutions and statute, and by virtue of all other powers thereto me enabling, do hereby, through Newton D. Baker, Secretary of War, take possession and assume control at 12 o'clock noon on the 28th day of December 1917, of each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United States and consisting of railroads and owned or controlled systems of coastwise and inland transportation engaged in general transportation, whether operated by steam or electric power, including also terminals, terminal companies, and terminal associations, sleeping and parlor cars, private cars and private car lines, elevators, warehouses, telegraph and telephone lines, and all other equipment and appurtenance commonly used upon or operated as a part of such rail or combined rail-and-water systems of transportation; to the end that such systems of transportation be utilized for the transfer and transportation of troops, war material, and equipment, to the exclusion so far as may be necessary of all other traffic thereon; and that so far as such exclusive use be not necessary or desirable such systems of transportation be operated and utilized in the performance of such other services as the national interest may require and of the usual and ordinary business and duties of common carriers.

It is hereby directed that the possession, control, operation, and utilization of such transportation systems, hereby by me undertaken, shall be exercised by and through William G. McAdoo, who is hereby appointed and designated Director General of Railroads. Said director may perform the duties imposed upon him, so long and to such extent as he shall determine through boards of directors, receivers, officers, and employees of said systems of transportation. Until and except so far as said director shall from time to time by general or special orders otherwise provide, the boards of directors, receivers, officers, and employees of the various transportation systems shall continue the operation thereof in the usual and ordinary course of the

business of common carriers, in the names of their respective companies.

Until and except so far as said director shall from time to time otherwise by general or special orders determine, such systems of transportation shall remain subject to all existing statutes and orders of the Interstate Commerce Commission and to all statutes and orders of regulating commissions of the various States in which said systems or any part thereof may be situated. But any orders, general or special, hereafter made by said director shall have paramount authority and be obeyed as such.

Nothing herein shall be construed as now affecting the possession, operation, and control of street electric passenger railways, including railways commonly called interurbans, whether such railways be or be not owned or controlled by such railroad companies or systems. By subsequent order and proclamation, if and when it shall be found necessary or desirable, possession, control, or operation may be taken of all or any part of such street railway systems, including subways and tunnels; and by subsequent order and proclamation possession, control, and operation in whole or in part may also be relinquished to the owners thereof of any part of the railroad systems or rail and water systems, possession and control of which are hereby assumed.

The director shall, as soon as may be after having assumed such possession and control, enter upon negotiations with the several companies looking to agreements for just and reasonable compensation for the possession, use, and control of their respective properties on the basis of an annual guaranteed compensation above accruing depreciation and the maintenance of their properties equivalent, as nearly as may be, to the average of the net operating income thereof for the three-year period ending June 30, 1917, the results of such negotiations to be reported to me for such action as may be appropriate and lawful.

But nothing herein contained, expressed or implied, or hereafter done or suffered hereunder, shall be deemed in any way to impair the rights of the stockholders, bondholders, creditors, and other persons having interests in said systems of transportation or in the profits thereof to receive just and

adequate compensation for the use and control and operation of their property hereby assumed.

Regular dividends hitherto declared and maturing interest upon bonds, debentures, and other obligations may be paid in due course; and such regular dividends and interest may continue to be paid until and unless the said director shall from time to time otherwise by general or special orders determine; and, subject to the approval of the director, the various carriers may agree upon and arrange for the renewal and extension of maturing obligations.

Except with the prior written assent of said director no attachment by *mesne* process or on execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carriers; but suits may be brought by and against said carriers and judgments rendered as hitherto until and except so far as said director may, by general or special orders, otherwise determine.

From and after 12 o'clock on said 28th day of December, 1917, all transportation systems included in this order and proclamation shall conclusively be deemed within the possession and control of said director without further act or notice. But for the purpose of accounting said possession and control shall date from 12 o'clock midnight on December 31, 1917.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done by the President, through Newton D. Baker, Secretary of War, in the District of Columbia, this 26th day of December, in the year of our Lord one thousand nine hundred and seventeen, and of the independence of the United States the one hundred and forty-second.

By the President: WOODROW WILSON.

ROBERT LANSING,
Secretary of State.

NEWTON D. BAKER,
Secretary of War.

Statement of the President.

I have exercised the powers over the transportation systems of the country which were granted me by the act of

Congress of last August because it has become imperatively necessary for me to do so. This is a war of resources no less than of men, perhaps even more than of men, and it is necessary for the complete mobilization of our resources that the transportation systems of the country should be organized and employed under a single authority and a simplified method of coordination which have not proved possible under private management and control. The committee of railway executives who have been cooperating with the Government in this all-important matter have done the utmost that it was possible for them to do; have done it with patriotic zeal and with great ability; but there were difficulties that they could neither escape nor neutralize. Complete unity of administration in the present circumstances involves upon occasion and at many points a serious dislocation of earnings, and the committee was, without power or authority to rearrange charges or effect proper compensations and adjustments of earnings. Several roads which were willingly and with admirable public spirit accepting the orders of the committee have already suffered from these circumstances and should not be required to suffer further. In mere fairness to them the full authority of the Government must be substituted. The Government itself will thereby gain an immense increase of efficiency in the conduct of the war and of the innumerable activities upon which its successful conduct depends.

The public interest must be first served and, in addition, the financial interests of the Government and the financal interests of the railways must be brought under a common direction. The financial operations of the railways need not then interfere with the borrowings of the Government, and they themselves can be conducted at a greater advantage. Investors in railway securities may rest assured that their rights and interests will be as scrupulously looked after by the Government as they could be by the directors of the several railway systems. Immediately upon the reassembling of Congress I shall recommend that these definite guarantees be given: First, of course, that the railway properties will be maintained during the period of Federal control in as good repair and as complete equipment as when taken over by the Government; and, second, that the roads shall re-

ceive a net operating income equal in each case to the average net income of the three years preceding June 30, 1917; and I am entirely confident that the Congress will be disposed in this case, as in others, to see that justice is done and full security assured to the owners and creditors of the great system which the Government must now use under its own direction or else suffer serious embarrassment.

The Secretary of War and I are agreed that, all the circumstances being taken into consideration, the best results can be obtained under the immediate executive direction of the Hon. William G. McAdoo, whose practical experience peculiarly fits him for the service and whose authority as Secretary of the Treasury will enable him to coordinate as no other man could the many financial interest which will be involved and which might, unless systematically directed, suffer very embarrassing entanglements.

The Government of the United States is the only great Government now engaged in the war which has not already assumed control of this sort. It was thought to be in the spirit of American institutions to attempt to do everything that was necessary through private management, and if zeal and ability and patriotic motive could have accomplished the necessary unification of administration it would certainly have been accomplished; but no zeal or ability could overcome insuperable obstacles, and I have deemed it my duty to recognize that fact in all candor, now that it is demonstrated, and to use without reserve the great authority reposed in me. A great national necessity dictated the action, and I was therefore not at liberty to abstain from it.

WOODROW WILSON.

Thereafter Congress enacted the Federal Control Act which follows.

An Act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled,* That the President having in time of war taken over the possession, use, control, and operation (called herein Federal control) of certain railroads and systems of transportation (called

herein carriers), is hereby authorized to agree with and to guarantee to any such carrier making operating returns to the Interstate Commerce Commission, that during the period of such Federal control it shall receive as just compensation an annual sum, payable from time to time in reasonable installments, for each year and pro rata for any fractional year of such Federal control, not exceeding a sum equivalent as nearly as may be to its average annual railway operating income for the three years ended June thirtieth, nineteen hundred and seventeen.

That any railway operating income accruing during the period of Federal control in excess of such just compensation shall remain the property of the United States. In the computation of such income, debits and credits arising from the accounts called in the monthly reports to the Interstate Commerce Commission equipment rents and joint facility rents shall be included, but debits and credits arising from the operation of such street electric passenger railways, including railways commonly called interurbans, as are at the time of the agreement not under Federal control, shall be excluded. If any lines were acquired by, leased to, or consolidated with such railroad or system between July first, nineteen hundred and fourteen, and December thirty-first, nineteen hundred and seventeen, both inclusive, and separate operating returns to the Interstate Commerce Commission were not made for such lines after such acquisition, lease, or consolidation, there shall (before the average is computed) be added to the total railway operating income of such railroad or system for the three years ended June thirtieth, nineteen hundred and seventeen, the total railway operating income for the lines so acquired, leased, o consolidated. for the period beginning July first, nineteen hundred and fourteen, and ending on the date of such acquisition, lease, or consolidation, or on December thirty-first, nineteen hundred and seventeen, whichever is the earlier. The average railway operating income shall be ascertained by the Interstate Commerce Commission and certified by it to the President. Its certificate shall, for the purpose of such agreement, be taken as conclusive of the amount of such average annual railway operating income.

Every such agreement shall provide that any Federal taxes under the Act of October third, nineteen hundred and seventeen, or Acts in addition thereto or in amendment thereof, commonly called war taxes, assessed for the period of Federal control beginning January first, nineteen hundred and eighteen, or any part of such period, shall be paid by the carrier out of its own funds, or shall be charged against or deducted from the just compensation; that other taxes assessed under Federal or any other governmental authority for the period of Federal control or any part thereof, either on the property used under such Federal control or on the right to operate as a carrier, or on the revenues or any part thereof derived from operation (not including, however, assessments for public improvements or taxes assessed on property under construction, and chargeable under the classification of the Interstate Commerce Commission to investment in road and equipment), shall be paid out of revenues derived from railway operations while under Federal control; that all taxes assessed under Federal or any other governmental authority for the period prior to January first, nineteen hundred and eighteen, whenever levied or payable, shall be paid by the carrier out of its own funds, or shall be charged against or deducted from the just compensation.

Every such agreement shall also contain adequate and appropriate provisions for the maintenance, repair, renewals, and depreciation of the property, for the creation of any reserves or reserve funds found necessay in connection therewith, and for such accounting and adjustments of charges and payments, both during and at the end of Federal control as may be requisite in order that the property of each carrier may be returned to it in substantially as good repair and in substantially as complete equipment as it was in at the beginning of Federal control, and also that the United States may, by deductions from the just compensations or by other proper means and charges be reimbursed for the cost of any additions, repairs, renewals, and betterments to such property not justly chargeable to the United States; in making such accounting and adjustments, due consideration shall be given to the amounts expended or reserved by each carrier for maintenance, repairs, renewals, and de-

preciation during the three years ended June thirtieth, nineteen hundred and seventeen, to the condition of the property at the begining and at the end of Federal control and to any other pertinent facts and circumstances.

The President is further authorized in such agreement to make all other reasonable provisions, not inconsistent with the provisions of this Act or of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, that he may deem necessary or proper for such Federal control or for the determination of the mutual rights and obligations of the parties to the agreement arising from or out of such Federal control.

If the President shall find that the condition of any carrier was during all or a substantial portion of the period of three years ended June thirtieth, nineteen hundred and seventeen because of non-operation, receivership, or where recent expenditures for additions or improvements or equipment were not fully reflected in the operating railway income of said three years or a substantial portion thereof, or because of any undeveloped or abnormal conditions, so exceptional as to make the basis of earnings hereinabove provided for plainly inequitable as a fair measure of just compensation, then the President may make with the carrier such agreement for such amount as just compensation as under the circumstances of the particular case he shall find just.

That every railroad not owned, controlled, or operated by another carrier company, and which has heretofore competed for traffic with a railroad or railroads of which the President has taken the possession, use, and control, or which connects with such railroads and is engaged as a common carrier in general transportation, shall be held and considered as within "Federal control," as herein defined, and necessary for the prosecution of the war, and shall be entitled to the benefit of all of the provisions of this Act: *Provided, however,* That nothing in this paragraph shall be construed as including any street or interurban electric railway which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic, or sale of power, heat and light, or both.

The agreement shall also provide that the carrier shall accept all the terms and conditions of this act and any regulation or order made by or through the President under authority of this act or of that portion of the act entitled "An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, which authorizes the President in time of war to take possession, assume control, and utilize systems of transportation.

Sec. 2. That if no such agreement is made, or pending the execution of an agreement, the President may nevertheless pay to any carrier while under Federal control an annual amount, payable in reasonable installments, not exceeding ninety per centum of the estimated annual amount of just compensation, remitting such carrier, in case where no agreement is made, to its legal rights for any balance claimed to the remedies provided in section three hereof. Any amount thereafter found due such carrier above the amount paid shall bear interest at the rate of six per centum per annum. The acceptance of any benefits under this section shall constitute an acceptance by the carrier of all the provisions of this Act and shall obligate the carrier to pay to the United States, with interest at the rate of six per centum per annum from a date or dates fixed in proceedings under section three, the amount by which the sums received under this section exceed the sum found due in such proceedings.

Sec. 3. That all claims for just compensation not adjusted (as provided in section one) shall, on the application of the President or of any carrier, be submitted to boards, each consisting of three referees to be appointed by the Interstate Commerce Commission, members of which and the official force thereof being eligible for service on such boards without additional compensation. Such boards of referees are hereby authorized to summon witnesses, require the production of records, books, correspondence, documents, memoranda, and other papers, view properties, administer oaths, and may hold hearings in Washington and elsewhere, as their duties and the convenience of the parties may require. In case of disobedience to a subpœna the board may invoke the aid of

any district court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any person, corporation, partnership, or association, issue an order requiring appearance before the board , or the production of documentary evidence, if so ordered, or the giving of evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. Such cases may be heard separately or together or by classes, by such boards as the Interstate Commerce Commission in the first instance, or any board of referees to which any such cases shall be referred may determine. Said boards shall give full hearings to such carriers and to the United States; shall consider all the facts and circumstances, and shall report as soon as practicable in each case to the President the just compensation, calculated on an annual basis and otherwise in such form as to be convenient and available for the making of such agreement as is authorized in section one. The President is authorized to enter into an agreement with such carrier for just compensation upon a basis not in excess of that reported by such board, and may include therein provisions similar to those authorized under section one. Failing such agreement, either the United States or such carrier may file a petition in the Court of Claims for the purpose of determining the amount of such just compensation, and in the proceedings in said court the report of said referees shall be prima facie evidence of the amount of just compensation and of the facts therein stated. Proceedings in the Court of Claims under this section shall be given precedence and expedited in every practicable way.

Sec. 4. That the just compensation that may be determined as hereinbefore provided by agreement or that may be adjudicated by the Court of Claims, shall be increased by an amount reckoned at a reasonable rate per centum to be fixed by the President upon the cost of any additions and betterments, less retirements, and upon the cost of road extensions to the property of such carrier made by such carrier with the

approval of or by order of the President while such property is under Federal control.

Sec. 5. That no carrier while under Federal control shall, without the prior approval of the President, declare or pay any dividend in excess of its regular rate of dividends during the three years ended June thirtieth, nineteen hundred and seventeen: *Provided, however,* That such carriers as have paid no regular dividends or no dividends during such period may, with the proper approval of the President, pay dividends at such rate as the President may determine.

Sec. 6. That the sum of $500,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, which together with any funds available form any operating income of said carriers, may be used by the President as a revolving fund for the purpose of paying the expenses of the Federal control, and so far as necessary the amount of just compensation, and to provide terminals, motive power, cars, and other necessary equipment, such terminals, motive power, cars, and equipment to be used and accounted for as the President may direct and to be disposed of as Congress may hereafter by law provide.

The President may also make or order any carrier to make any additions, betterments, or road extensions, and to provide terminals, motive power, cars, and other equipment necessary or desirable for war purposes or in the public interest on or in connection with the property of any carrier. He may from said revolving fund advance to such carrier all or part of the expense of such additions, betterments, or road extensions, and to provide terminals, motive power, cars, and other necessary equipment so ordered and constructed by such carrier or by the President, such advances to be charged against such carrier and to bear interest at such rate and be payable on such terms as may be determined by the President, to the end that the United States may be fully reimbursed for any sums so advanced.

Any loss claimed by any carrier by reason of any such additions, betterments, or road extensions so ordered and constructed may be determined by agreement between the President and such carrier; failing such agreement the amount of

such loss shall be ascertained as provided in section three hereof.

From said revolving fund the President may expend such an amount as he may deem necessary or desirable for the utilization and operation of canals, or for the purchase, construction, or utilization and operation of boats, barges, tugs, and other transportation facilities on the inland, canal and coastwise waterways, and in the operation and use of such facilities create or employ such agencies and enter into such contracts and agreements as he shall deem in the public interest.

Sec. 7. That for the purpose of providing funds requisite for maturing obligations or for other legal and proper expenditures, or for reorganizing railroads in receivership, carriers may, during the period of Federal control, issue such bonds, notes, equipment trust certificates, stock, and other forms of securities secured or unsecured by mortgage, as the President may first approve as consistent with the public interest. The President may, out of the revolving fund created by this act, purchase for the United States all or any part of such securities at prices not exceeding par, and may sell such securities whenever in his judgment it is desirable at prices not less than the cost thereof. Any securities so purchased shall be held by the Secretary of the Treasury, who shall, under the direction of the President, represent the United States in all matters in connection therewith in the same manner as a private holder thereof. The President shall each year as soon as practicable after January first, cause a detailed report to be submitted to the Congress of all receipts and expenditures made under this section and section six during the preceding calendar year.

Sec. 8. That the President may execute any of the powers herein and heretofore granted him with relation to Federal control through such agencies as he may determine, and may fix the reasonable compensation for the performance of services in connection therewith, and may avail himself of the advice, assistance, and cooperation of the Interstate Commerce Commission and of the members and employees thereof, and may also call upon any department, commission, or board of the Government for such services as he may deem expedient.

But no such official or employee of the United States shall receive additional compensation for such services except as now permitted by law.

Sec. 9. That the provisions of the act entitled "An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, shall remain in force and effect except as expressly modified and restricted by this act; and the President, in addition to the powers conferred by this act, shall have and is hereby given such other and further powers necessary or appropriate to give effect to the powers herein and heretofore conferred. The provisions of this act shall also apply to any carriers to which Federal control may be hereafter extended.

Sec. 10. That carriers while under Federal control shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this act or any other act applicable to such Federal control or with any order of the President. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; and in any action at law or suit in equity against the carrier, no defense thereto shall be made upon the ground that the carrier is an instrumentality or agency of the Federal Government. Nor shall any such carrier be entitled to have transferred to a Federal court any action heretofore or hereafter instituted by or against it, which action was not so transferrable prior to the Federal control of such carrier; and any action which has heretofore been so transferred because of such Federal control or of any act of Congress or official order or proclamation relating thereto shall upon motion of either party be transferred to the court in which it was originally instituted. But no process, mesne or final, shall be levied against any property under such Federal control.

That during the period of Federal control, whenever in his opinion the public interest requires, the President may initiate rates, fares, charges, classifications, regulations, and practices by filing the same with the Interstate Commerce Com-

mission, which said rates, fares, charges, classifications, regulations, and practices shall not be suspended by the commission pending final determination.

Said rates, fares, charges, classifications, regulations, and practices shall be reasonable and just and shall take effect at such time and upon such notice as he may direct, but the Interstate Commerce Commission, shall, upon complaint, enter upon a hearing concerning the justness and reasonableness of so much of any order of the President as establishes or changes any rate, fare, charge, classification, regulation, or practice of any carrier under Federal control, and may consider all the facts and circumstances existing at the time of the making of the same. In determining any question concerning any such rates, fares, charges, classifications, regulations, or practices or changes therein, the Interstate Commerce Commission shall give due consideration to the fact that the transportation systems are being operated under a unified and coordinated national control and not in competition.

After such hearing the commission may make such findings and orders as are authorized by the act to regulate commerce as amended and said findings and orders shall be enforced as provided in said act: *Provided, however,* That when the President shall find and certify to the Interstate Commerce Commission that in order to defray the expenses of Federal control and operation fairly chargeable to railway operating expenses, and also to pay railway tax accruals other than war taxes, net rents for joint facilities and equipment, and compensation to the carriers, operating as a unit, it is necessary to increase the railway operating revenues, the Interstate Commerce Commission in determining the justness and reasonableness of any rate, fare, charge, classification, regulation or practice shall take into consideration said finding and certificate by the President, together with such recommendations as he may make.

Sec. 11. That every person or corporation, whether carrier or shipper, or any receiver, trustee, lessee, agent, or person acting for or employed by a carrier or shipper, or other person, who shall knowingly violate or fail to observe any of the provisions of this act, or shall knowingly interfere with or impede the possession, use, operation, or control of any

railroad property, railroad, or transportation system hitherto or hereafter taken over by the President, or shall knowingly violate any of the provisions of any order or regulation made in pursuance of this act, shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not more than $5,000, or, if a person, by imprisonment for not more than two years, or both. Each independent transaction constituting a violation of, or a failure to observe, any of the provisions of this act, or any order entered in pursuance thereof, shall constitute a separate offense. For the taking or conversion to his own use or the embezzlement of money or property derived from or used in connection with the possession, use, or operation of said railroads or transportation systems, the criminal statutes of the United States, as well as the criminal statutes of the various States where applicable, shall apply to all officers, agents, and employees engaged in said railroad and transportation service, while the same is under Federal control, to the same extent as to persons employed in the regular service of the United States. Prosecutions for violations of this act or of any order entered hereunder shall be in the district courts of the United States, under the direction of the Attorney General, in accordance with the procedure for the collection and imposing of fines and penalties now existing in said courts.

Sec. 12. That moneys and other property derived from the operation of the carriers during Federal control are hereby declared to be the property of the United States. Unless otherwise directed by the President, such moneys shall not be covered into the Treasury, but such moneys and property shall remain in the custody of the same officers, and the accounting thereof shall be in the same manner and form as before Federal control. Disbursements therefrom shall, without further appropriation, be made in the same manner as before Federal control and for such purposes as under the Interstate Commerce Commission classification of accounts in force December twenty-seventh, nineteen hundred and seventeen, are chargeable to operating expenses or to railway tax accruals and for such other purposes in connection with Federal control as the President may direct, except that taxes under Titles One and Two of the act entitled "An act to

provide revenue to defray war expenses, and for other purposes," approved October third, nineteen hundred and seventeen, or any act in addition thereto or in amendment thereof, shall be paid by the carrier out of its own funds. If Federal control begins or ends during the tax year for which any taxes so chargeable to railway tax accruals are assessed, the taxes for such year shall be apportioned to the date of the beginning or ending of such Federal control, and disbursements shall be made only for that portion of such taxes as is due for the part of such tax year which falls within the period of Federal control.

At such periods as the President may direct, the books shall be closed and the balance of revenues over disbursements shall be covered into the Treasury of the United States to the credit of the revolving fund created by this act. If such revenues are insufficient to meet such disbursements, the deficit shall be paid out of such revolving fund in such manner as the President may direct.

Sec. 13. That all pending cases in the courts of the United States affecting railroads or other transportation systems brought under the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended and supplemented, including the commodities clause, so called, or under the act to protect trade and commerce against unlawful restraints and monopolies, approved July second, eighteen hundred and ninety, and amendments thereto, shall proceed to final determination as soon as may be, as if the United States had not assumed control of transportation systems; but in any such case the court having jurisdiction may, upon the application of the United States, stay execution of final judgment or decree until such time as it shall deem proper.

Sec. 14. That the Federal control of railroads and transportation systems herein and heretofore provided for shall continue for and during the period of the war and for a reasonable time thereafter, which shall not exceed one year and nine months next following the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: *Provided, however,* That the President may, prior to July first, nineteen hundred and eighteen, relinquish control

of all or any part of any railroad or system of transportation, further Federal control of which the President shall deem not needful or desirable; and the President may at any time during the period of Federal control agree with the owners thereof to relinquish all or any part of any railroad or system of transportation. The President may relinquish all railroads and systems of transportation under Federal control at any time he shall deem such action needful or desirable. No right to compensation shall accrue to such owners from and after the date of relinquishment for the property so relinquished.

Sec. 15. That nothing in this act shall be construed to amend, repeal, impair, or affect the existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transportation of troops, war materials, Government supplies, or the issue of stocks and bonds.

Sec. 16. That this act is expressly declared to be emergency legislation enacted to meet conditions growing out of war; and nothing herein is to be construed as expressing or prejudicing the future policy of the Federal Government concerning the ownership, control, or regulation of carriers or the method or basis of the capitalization thereof.

Approved, March 21, 1918.

Following the passage of the Act of March 21, 1918, other proclamations were issued:

## A Proclamation.

### Authorizing the Director General of Railroads to Exercise Powers Conferred on the President by Congress.

Whereas, by the proclamation dated December 26, 1917, taking over each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United States, it was provided "that the possession, control, operation, and utilization of such transportation systems hereby by me undertaken, shall be exercised by and through William G. McAdoo, who is hereby appointed and designated Director General of Rail-

roads," and the said William G. McAdoo pursuant to said proclamation entered upon and has continued to discharge the duties of Director General of Railroads as provided therein; and

Whereas, since the issuance of said proclamation the Congress of the United States has passed an act entitled "An Act to provide for the Operation of Transportation Systems while under Federal Control, for the Just Compensation of their Owners, and for other Purposes, which act was duly approved by me on the 21st of March, 1918, and is now in full force and effect; and in terms confers upon the President the powers specified therein and the authority to carry the same into effect; and

Whereas, it is provided in Section 8 of said act that the President may execute any of the powers therein and theretofore granted him with relation to the Federal control of systems of transportation and parts thereof, including railroads, inland waterways, etc., through such agencies as he may determine.

Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers and authority so vested in me by said act and of all other powers me hereto enabling, do hereby authorize the said William G. McDoo, Director General of Railroads as aforesaid, either personally or through such divisions, agencies, or persons as he may appoint, and in his own name or in the name of such divisions, agencies, or persons, or in the name of the President to agree with the carriers or any of them or with any other person in interest, upon the amount of compensation to be paid pursuant to law, and to sign, seal, and deliver in his own name or in the name of the President or in the name of the United States such agreements as may be necessary and expedient with the several carriers or other persons in interest respecting compensation, or any other matter concerning which it may be necessary or expedient to deal and to make any and all contracts, agreements ,or obligations necessary or expedient and to issue any and all orders which may in any way be found necessary and expedient in connection with the Federal control of systems of transportation, railroads, and inland waterways as fully in all respects as the President is authorized

to do, and generally to do and perform all and singular all acts and things and to exercise all and singular the powers and duties which in and by the said act, or any other act in relation to the subject hereof, the President is authorized to do and perform.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia this 29th day of March in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-second.

Woodrow Wilson.

(Seal.)

By the President:

Robert Lansing,

Secretary of State.

## A Proclamation.

Possession and Control of Certain Transportation Systems.

Whereas the Congress of the United States, in the exercise of the constitutional authority vested in them, by joint resolution of the Senate and House of Representatives bearing date April 6, 1917, resolved:

That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared: and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination all of the resources of the country are hereby pledged by the Congress of the United States.

And by joint resolution bearing date of December 7, 1917, resolved:

That a state of war is hereby declared to exist between the United States of America and the Imperial and Royal Austro-Hungarian Government; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial and Royal Austro-Hungarian Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States.

And whereas it is provided by section 1 of the act approved August 29, 1916, entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes," as follows:

The President in time of war is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion, as far as may be necessary, of all other traffic thereon, for the transfer or transportation of troops, war material, and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

And whereas it has now become necessary in the national defense to take possession and assume control of certain systems of transportation and to utilize the same to the exclusion, as far as may be necessary, of other than war traffic thereon, for the transportation of troops, war material, and equipment therefor, and for other needful and desirable purposes connected with the prosecution of the war:

Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolutions and statute, and by virtue of all other powers thereto me enabling, do hereby, through Benedict Crowell, Acting Secretary of War, take possession and assume control at 12.01 a. m., on the 13th day of April, 1918, of each and every system of transportation and the appurtenances thereof as follows, to wit: Clyde Steamship Company, a corporation of the State of Maine; Mallory Steamship Company, a corporation of the State of Maine; Merchants & Miners Transportation Company, a corporation of the state of Maryland; and Southern Steamship Company, a corporation of the State of Delaware, consisting of steamships, tugs, lighters, barges, ships, boats, and marine crafts of any and every kind or description and all the tackle, appurtenances to and appliances thereof, together with all wharves, docks, warehouses, and other property of every kind or nature, real or chattel, owned, leased, chartered, controlled, or used by said companies or either of them in conducting or in connection with said transportation systems, to the end that such systems of transportation be operated and utilized in the transportation of troops, war material, and equipment to the exclusion so far as may be necessary of all other traffic thereon;

and that so far as such exclusive use be not necessary or desirable such systems of ransportation be operated and utilized in the performance of such other services as the national interest may require and of the usual and ordinary business and duties of common carriers.

It is hereby directed that the possession, control, operation, and utilization of such transportation systems, hereby by me undertaken, shall be exercised by and through William G. McAdoo, who has been duly appointed and designated Director General of Railroads. Said Director General may perform the duties imposed upon him so long and to such extent as he shall determine, through the boards of directors, officers, and employees of said systems of transportation. Until and except so far as said director General shall from time to time by general or special orders otherwise provide, the boards of directors, officers, and employees of said transportation systems shall continue the operation thereof in the usual and ordinary course of the business of common carriers in the names of their respective companies.

Until and except so far as said Director General shall from time to time otherwise by general or special orders determine, such systems of transportation shall remain subject to all existing statutes of the United States and orders of the Interstate Commerce Commission, and to all statutes and orders of regulating commissions of the various States in which said systems or any part thereof may be situated. But any orders, general or special, hereafter made by said Director General, shall have paramount authority and be obeyed as such.

The Director General shall, as soon as may be after having assumed such possession and control, enter upon negotiations with the several companies looking to agreements for just and reasonable compensation for the possession, use, and control of their respective properties and such just compensation as provided by law.

But nothing herein contained, express or implied, or hereafter done or suffered hereunder, shall be deemed in any way to impair the rights of the stockholders, bondholders, creditors, and other persons having interests in said systems of transportation or in the profits thereof to receive just and adequate compensation for the use and control and operation of their property hereby assumed.

That none of said carriers while under Federal control shall, without the prior approval of the President, declare

or pay any dividends in excess of its regular rate of dividends during the three years ended June thirtieth, nineteen hundred and seventeen; *Provided, however,* That such carriers as have paid no regular dividends or no dividends during said period may, with the prior approval of the President, pay dividends at such rate as the President may determine.

Except with the prior written assent of said Director General, no attachment by mesne process or on execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carriers; but suits may be brought by and against said carriers and judgments rendered as hitherto until and except so far as said Director General may, by general or special orders, otherwise determine.

From and after 12:01 a. m. on said 13th day of April, 1918, all transportation systems included in this order and proclamation shall conclusively be deemed within the possession and control of said Director General without further act or notice.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done by the President, through Benedict Crowell, Acting Secretary of War, in the District of Columbia, this 11th day of April, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States the one hundred and forty-second.

(Seal) WOODROW WILSON

By the President:

ROBERT LANSING,
Secretary of State.

BENEDICT CROWELL,
Acting Secretary of War.

## Possession and Control of American Railway Express Company.

### A Proclamation.

**Possession and Control of a Certain Transportation System.**

Whereas the organizations for the conduct of the express business over numerous systems of transportation which have been duly placed under Federal Control, and pertaining to such systems of transportation, have been consolidated into the American Railway Express Company which has been made the sole agent of the Government for conducting the express

business, with the result that the entire transportation system of said Express Company has been necessarily in substance and effect placed under Federal control; and

Whereas it is desirable, in order to administer to the best advantage the transportation business and operations of the American Railway Express System to make it specifically clear by this proclamation that the President has the possession. use, control and operation of the entire transportation system of the American Railway Express Company,

Now, Therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by law do hereby, through Newton D. Baker, Secretary of War, take possession, and assume control at 12 o'clock noon on the 18th day of November, 1918, of that certain system of transportation called the American Railway Express Company and all of its appurtenances and property of every kind or nature, directly or indirectly, owned, leased, chartered. controlled, or used in the conduct of, or in connection with, its express business.

It is hereby further directed that the possession, control, operation and utilization of said express transportation system hereby by me undertaken shall be exercised by and through William G. McAdoo, heretofore appointed Director General of Railroads, with all the powers conferred upon him by the said Proclamations of December 26, 1917, and March 29, 1918, respectively, together with all and singular the powers conferred upon the President by the Act of Congress entitled. "An Act to Provide for the Operation of Transportation Systems while under Federal Control, for the Just Compensation of their Owners, and for Other Purposes," approved March 21, 1918.

The said Director General of Railroads may perform the duties hereby imposed upon him, so long and to such an extent as he shall determine, through the Board of Directors, officers and employees of the said American Railway Express Company, under the contract already made, and dated the twenty-sixth day of June, 1918, between the said Director General of Railroads and said American Railway Express Company, and until and except so far as said Director General shall from time to time by general or special orders other-

wise provide, the Board of Directors, officers and employees of said Company shall continue the operation thereof in the usual and ordinary course under such contract.

From and after 12 o'clock noon on said 18th November, 1918, the said transportation system shall conclusively be deemed within the possession and control of said Director General without further act or notice.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the United States to be affixed.

Done by the President, through Newton D. Baker, Secretary of War, in the District of Columbia, this 16th day of November, in the year of our Lord, one thousand nine hundred and eighteen, and of the Independence of the United States the one hundred and forty-third.

(Seal)

By the President: WOODROW WILSON

ROBERT LANSING,
Secretary of State.

NEWTON D. BAKER,
Secretary of War.

General Orders relating to suits were issued as follows:

General Order No. 18.

Washington, April 9, 1918.

Whereas the act of Congress approved March 21, 1918, entitled "An act to provide for the operation of transportation systems while under Federal control," provides (section 10) "That carriers while under Federal control shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this act or with any order of the President. * * * But no process, mesne, or final, shall be levied against any property under such Federal control;" and

Whereas it appears that suits against the carriers for personal injuries, freight and damage claims are being brought in States and jurisdictions far remote from the place where plaintiffs reside or where the cause of action arose, the effect thereof being that men operating the trains engaged in hauling war materials, troops, munitions, or supplies are required to leave their trains and attend court as witnesses,

and travel sometimes for hundreds of miles from their work necessitating absence from their trains for days and sometimes for a week or more, which practice is highly prejudicial to the just interests of the Government and seriously interferes with the physical operation of the railroads, and the practice of suing in remote jurisdictions is not necessary for the protection of the rights or the just interests of plaintiffs.

It is therefore ordered, That all suits against carriers while under Federal control must be brought in the county or district where the plaintiff resides, or in the county or district where the cause of action arose.

W. G. McADOO,
Director General of Railroads.

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General Order No. 18-A.

Washington, April 18, 1918.

General Order No. 18 issued April 9, 1918, is hereby amended to read as follows:

It is therefore ordered that all suits against carriers while under Federal control must be brought in the county or district where the plaintiff resided at the time of the accrual of the cause of action or in the county or district where the cause of action arose.

W. G. McADOO,
Director General of Railroads.

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General Order No. 26.

Washington. May 23, 1918.

Whereas the act of Congress approved March 21, 1918, entitled "An act to provide for the operation of transportation systems while under Federal control," provides (sec. 10) "That carriers while under Federal control shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this act * * * or with any order of the President. * * * But no process, mesne or final, shall be levied against any property under such Federal control;" and authorizes the President to exercise any of the powers by said act or theretofore

granted him with relation to Federal control through such agencies as he might determine; and

Whereas by a proclamation dated March 29, the President, acting under the Federal control act and all other powers him thereto enabling, authorized the Director General, either personally or through such divisions, agencies, or persons, or in the name of the President, to issue any and all orders which may in any way be found necessary and expedient in connection with the Federal control of systems of transportation, railroads, and inland waterways as fully in all respects as the President is authorized to do, and generally to do and perform all and singular the acts and things and to exercise all and singular the powers and duties which in and by the said act, or any other act in relation to the subject hereof, the President is authorized to do and perform; and

Whereas it appears that there are now pending against carriers under Federal control a great many suits for personal injury, freight and damage claims, and that the same are being pressed for trial by the plaintiffs in States and jurisdictions far removed from the place where the persons alleged to have been injured or damaged resided at the time of such injury or damages, or from remote from the place where the cause of action arose; the effect of such trail being that men operating the trains engaged in hauling war materials, troops, munitions or supplies, are required to leave their trains and attend court as witnesses, and travel sometimes for hundreds of miles from their work, necessitating absence from their trains for days and sometimes for a week or more; which practice is highly prejudicial to the just interests of the Government and seriously interferes with the physical operation of railroads; and the practice of trying such cases during Federal control in remote jurisdictions is not necessary for the protection of the rights or the just interests of plaintiffs:

It is therefore ordered, That upon a showing by the defendant carrier that the just interests of the Government would be prejudiced by a present trial of any suit against any carrier under Federal control, which suit is not covered by General Order No. 18 and which is now pending in any county or district other than where the cause of action arose or

other than in which the person alleged to have been injured or damaged at that time resided, the suit shall not be tried during the period of Federal control: *Provided,* If no suit on the same cause of action is now pending in the county or district where the cause of action arose, or where the person injured or damaged at that time resided, a new suit may, upon proper service, be instituted therein; and if such suit is now barred by the statute of limitations or will be barred before October 1, 1918, then the stay directed by this order shall not apply unless the defendant carrier shall stipulate in open court to waive the defense of the statute of limitations in any such suit which may be brought before October 1, 1918.

This order is declared to be necessary in the present war emergency. In the event of unnecessary hardship in any case, either party may apply to the Director General for relief, and he will make such order therein as the circumstances may require consistent with the public interest.

This order is not intended in any way to impair or affect General Order No. 18 as amended by General Order No. 18-A.

W. G. McADOO,
Director General of Railroads.

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General Order No. 50.

Washington, October 28, 1918.

Whereas by the Proclamations dated December 26, 1917, and April 11, 1918, the President took possession and assumed control of systems of transportation and the appurtenances thereof, and appointed the undersigned, William G. McAdoo, Director General of Railroads, and provided in and by said Proclamations that "until and except so far as said Director shall from time to time otherwise by general or special orders determine, such systems of transportation shall remain subject to all existing statutes and orders of the Interstate Commerce Commission and to all statutes * * * but any orders, general or special, hereafter made by said Director shall have paramount authority and be obeyed as such;" and

Whereas the Act of Congress, called the Federal Control Act, approved March 21, 1918, provided that "carriers while under Federal control shall be subject to all laws and liabilities as

common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this Act or any other Act applicable to such Federal control, or with any order of the President;" and

Whereas since the Director General assumed control of said systems of transportation, suits are being brought and judgments and decrees rendered against carrier corporations on matters based on causes of action arising during Federal control for which the said carrier corporations are not responsible, and it is right and proper that the actions, suits and proceedings hereinafter referred to, based on causes of actions arising during or out of Federal control should be brought directly against the said Director General of Railroads and not against said corporations:

It is therefore ordered, that actions at law, suits in equity, and proceedings in admiralty hereafter brought in any court based on contract, binding upon the Director General of Railroads, claim for death or injury to person, or for loss and damage to property, arising since December 31, 1917, and growing out of the possession, use, control, or operation of any railroad or system of transportation by the Director General of Railroads, which action, suit or proceeding but for Federal control might have been brought against the carrier company, shall be brought against William G. McAdoo, Director General of Railroads and not otherwise; *Provided however, that* this order shall not apply to actions, suits, or proceedings for the recovery of fines, penalties, and forfeitures.

Subject to the provisions of General Orders numbered 18, 18-A and 26, heretofore issued by the Director General of Railroads, service of process in any such action, suit or proceeding may be made upon operating officials operating for the Director General of Railroads, the railroad or other carrier in respect of which the cause of action arises in the same way service was heretofore made upon like operating officials for such railroad or other carrier company.

The pleadings in all such actions at law, suits in equity, or proceedings in admiralty, now pending against any carrier company for a cause of action arising since December 31, 1917, based upon a cause of action arising from or out of the opera-

tion of any railroad or other carrier, may on application be amended by substituting the Director General of Railroads for the carrier company as party defendant and dismissing the company therefrom.

The undersigned Director General of Railroads is acting herein by authority of the President for and on behalf of the United States of America, therefore no supersedeas bond or other security shall be required of the Director General of Railroads in any court for the taking of or in connection with an appeal, writ of error, supersedeas, or other process in law, equity, or in admirality, as a condition precedent to the prosecution of any such appeal, writ of error, supersedeas, or other process, or otherwise in respect of any such cause of action or proceeding.

W. G. McAdoo,
Director General of Railroads.

Walter D. Hines upon the resignation of William G. McAdoo was appointed by the President Director General of Railroads, later John Barton Payne was upon the resignation of Hines appointed.

Title II of Transportation Act, 1920 contains the statute terminating Federal control and follows:

TITLE II.—TERMINATION OF FEDERAL CONTROL.

Sec. 200. (*a*) Federal control shall terminate at 12.01 a. m., March 1, 1920; and the President shall then relinquish possession and control of all railroads and systems of transportation then under Federal control and cease the use and operation thereof.

(*b*) Thereafter the President shall not have or exercise any of the powers conferred upon him by the Federal Control Act relating—

(1) To the use or operation of railroads or systems of transportation;

(2) To the control or supervision of the carriers owning or operating them, or of the business or affairs of such carriers;

(3) To their rates, fares, charges, classifications, regulations, or practices;

(4) To the purchase, construction, or other acquisition of boats, barges, tugs, and other transportation facilities on the inland, canal, or coastwise waterways; or (except in pursuance of Federal control) of terminals, motive power, car, or equipment, contracts or agreements entered into before the termination of on or in connection with any railroad or system of transportation;

(5) To the utilization or operation of canals;

(6) To the purchase of securities of carriers, except in pursuance of contracts or agreements entered into before the termi-

nation of Federal control, or as a necessary or proper incident to the adjustment, settlement, liquidation and winding up of matters arising out of Federal control; or

(7) To the use for any of the purposes above stated (except in pursuance of contracts or agreements entered into before the termination of Federal control, and except as a necessary or proper incident to the winding up or settling of matters arising out of Federal control, and except as provided in section 202) of the revolving fund created by such Act, or of any of the additions thereto made under such Act, or by the Act entitled "An Act to supply a deficiency in the appropriation for carrying out the Act entitled 'An Act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes,' approved March 21, 1918," approved June 30, 1919.

(*c*) Nothing in this Act shall be construed as affecting or limiting the power of the President in time of war (under section 1 of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes," approved August 29, 1916) to take possession and assume control of any system of transportation and utilize the same.

GOVERNMENT-OWNED BOATS ON INLAND WATERWAYS.

Sec. 201. (*a*) On the termination of Federal control, as provided in section 200, all boats, barges, tugs, and other transportation facilities, on the inland, canal, and coastwise water ways (hereinafter in this section called "transportation facilities") acquired by the United States in pursuance of the fourth paragraph of section 6 of the Federal Control Act (except the transportation facilities constituting parts of railroads or transportation systems over which Federal control was assumed) are transferred to the Secretary of War, who shall operate or cause to be operated such transportation facilities so that the lines of inland water transportation established by or through the President during Federal control shall be continued, and assume and carry out all contracts and agreements in relation thereto entered into by or through the President in pursuance of such paragraph prior to the time above fixed for such transfer. All payments under the terms of such contracts, and for claims arising out of the operation of such transportation facilities by or through the President prior to the termination of Federal control, shall be made out of moneys available under the provisions of this Act for adjusting, settling, liquidating, and winding up matters arising out of or incident to Federal control. Moneys required for such payments shall, from time to time, be transferred to the Secretary of War as required for payment under the terms of such contracts.

(*b*) All other payments after such transfer in connection with the construction, utilization, and operation of any such transportation facilities, whether completed or under construction, shall be made by the Secretary of War out of funds now or hereafter made available for that purpose.

(*c*) The Secretary of War is hereby authorized, out of any moneys hereafter made available therefor, to construct or contract for the construction of terminal facilities for the interchange of traffic between the transportation facilities operated by him under this section and other carriers whether by rail or water, and to make loans for such purposes under such terms and conditions as he may determine to any State whose constitution prohibits the ownership of such terminal facilities by other than the State or a political subdivision thereof.

(*d*) Any transportation facilities owned by the United States and included within any contract made by the United States for operation on the Mississippi River above Saint Louis, the possession of which reverts to the United States at or before the expiration of such contract, shall be operated by the Secretary of War so as to provide facilities for water carriage on the Mississippi River above Saint Louis.

(*e*) The operation of the transportation facilities referred to in this section shall be subject to the provisions of the Interstate Commerce Act as amended by this Act or by subsequent legislation, and to the provisions of the "Shipping Act, 1916," as now or hereafter amended, in the same manner and to the same extent as if such transportation facilities were privately owned and operated; and all such vessels while operated and employed solely as merchant vessels shall be subject to all other laws, regulations, and liabilities governing merchant vessels, whether the United States is interested therein as owner, in whole or in part, or holds any mortgage, lien, or interest therein. For the performance of the duties imposed by this section the Secretary of War is authorized to appoint or employ such number of experts, clerks, and other employees as may be necessary for service in the District of Columbia or elsewhere, and as may be provided for by Congress.

## SETTLEMENT OF MATTERS ARISING OUT OF FEDERAL CONTROL.

Sec. 202. The President shall, as soon as practicable after the termination of Federal control, adjust, settle, liquidate, and wind up all matters, including compensation, and all questions and disputes of whatsoever nature, arising out of or incident to Federal control. For these purposes and for the purpose of making the payments specified in subdivision (*a*) of section 201, all unexpended balances in the revolving fund created by the Federal Control Act or of the moneys appropriated by the Act entitled "An Act to supply a deficiency in the appropriation

for carrying out the Act entitled 'An Act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes,' approved March 21, 1918,'' approved June 30, 1919, are hereby reappropriated and made available until expended; and all moneys derived from the operation of the carriers or otherwise arising out of Federal control, and all moneys that have been or may be received in payment of the indebtedness of any carrier to the United States arising out of Federal control, shall be and remain available until expended for the aforesaid purposes; and there is hereby appropriated for the aforesaid purposes out of any money in the Treasury not otherwise appropriated, $200,000,000 in addition to the above, to be available until expended.

COMPENSATION OF CARRIERS WITH WHICH NO CONTRACT MADE.

Sec. 203. (*a*) Upon the request of any carrier entitled to just compensation under the Federal Control Act, but with which no contract fixing or waiving compensation has been made and which has made no waiver of compensation, the President: (1) shall pay to it so much of the amount he may determine to be just compensation as may be necessary to enable such carrier to have the sums required for interest, taxes, and other corporate charges and expenses referred to in paragraph (*b*) of section 7 of the standard contract between the United States and the carriers, accruing during the period for which such carrier is entitled to just compensation under the Federal Control Act, and also the sums required for dividends declared and paid during the same period, including, also, in addition a sum equal to that proportion of such last dividend which the period between its payment and the termination of the period for which the carrier is entitled to just compensation under the Federal Control Act bears to the last dividend period; and (2) may, in his discretion, pay to such carrier the whole or any part of the remainder of such estimated amount of just compensation.

(*b*) The acceptance of any benefits by a carrier under this section—

(1) shall not deprive it of the right to claim additional compensation, which, unless agreed upon, shall be ascertained in the manner provided in section 3 of the Federal Control Act; but

(2) shall constitute an acceptance by the carrier of all the provisions of the Federal Control Act as modified by this Act, and obligate the carrier to pay to the United States, with interest at the rate of 6 per centum per annum from a date or dates fixed in proceedings under section 3 of the Federal Control Act, the amount, by which the sums received on account of such compensation, under this section or otherwise, exceed the sum found due in such proceedings.

## REIMBURSEMENT OF DEFICITS DURING FEDERAL CONTROL.

Sec. 204. (*a*) When used in this section—

The term "carrier" means a carrier by railroad which, during any part of the period of Federal control, engaged as a common carrier in general transportation, and competed for traffic, or connected with a railroad under Federal control, and which sustained a deficit in its railway operating income for that portion (as a whole) of the period of Federal control during which it operated its own railroad or system of transportation; but does not include any street or interurban electric railway which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic or sale of power, heat, and light, or both; and

The term "test period" means the three years ending June 30, 1917.

(*b*) For the purposes of this section—

Railway operating income or any deficit therein for the period of Federal control shall be computed in a manner similar to that provided in section 209 with respect to such income or deficit for the guaranty period; and

Railway operating income or any deficit therein for the test period shall be computed in the manner provided in section 1 of the Federal Control Act.

(*c*) As soon as practicable after March 1, 1920, the Commission shall ascertain for every carrier, for every month of the period of Federal control during which its railroad or system of transportation was not under Federal operation, its deficit in railway opeatirng income, if any, and its railway operating income, if any (hereinafter called "Federal control return") and the average of its deficit in railway operating income, if any, and of its railway operating income, if any, for three corresponding months of the test period taken together, (hereinafter called "test period return"): provided, That "test period return," in the case of a carrier which operated its railroad or system of transportation for at least one year during, but not for the whole of. the test period, means its railway operating income, or the deficit therein, for the corresponding month during the test period, or the average thereof for the corresponding months during the test period taken together, during which the carrier operated its railroad or system of transportation.

(*d*) For every month of the period of Federal control during which the railroad or system of transportation of the carrier was not under Federal operation, the Commission shall then ascertain (1) the difference between its Federal control return, if a deficit, and its test period return, if a smaller deficit, or (2) the difference between its test period return, if an income, and its Federal control return, if a smaller income, or (3) the sum

of its Federal control return, if a deficit, plus its test period return, if an income. The sum of such amounts shall be credited to the carrier.

(*e*) For every such month the Commission shall then ascertain (1) the difference between the carrier's Federal control return, if an income, and its test period return, if a smaller income, or (2) the difference between its test period return, if a deficit, and its Federal control return, if a smaller deficit, or (3) the sum of its Federal control return, if an income, plus its test period return, if a deficit. The sum of such amounts shall be credited to the United States.

(*f*) If the sum of the amounts so credited to the carrier under subdivision (*d*) exceeds the sum of the amounts so credited to the United States under subdivision (*e*), the difference shall be payable to the carrier. In the case of a carrier which operated its railroad or system of transportation for less than a year during, or for none of, the test period, the foregoing computations shall not be used, but there shall be payable to such carrier its deficit in railway operating income for that portion (as a whole) of the period of Federal control during which it operated its own railroad or system of transportation.

(*g*) The Commission shall promptly certify to the Secretary of the Treasury the several amounts payable to carriers under paragraph (*f*). The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of each such carrier upon the Treasury of the United States for the amount shown in such certificate as payable thereto. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated.

INSPECTION OF CARRIERS' RECORDS.

Sec. 205. The President shall have the right, at all reasonable times until the affairs of Federal control are concluded, to inspect the property and records of all carriers whose railroads or systems of transportation were at any time under Federal control, whenever such inspection is necessary or appropriate (1) to protect the interest of the United States, or (2) to supervise matters being handled for the United States by agents of the carriers, or (3) to secure information concerning matters arising during Federal control, and such carriers shall provide all reasonable facilities therefor, including the issuance of free transportation to all agents of the President while traveling on official business for these purposes.

Such carriers shall, at their expense, upon the request of the President, or those duly authorized by him, furnish all necessary and proper information and reports compiled from the records made or kept during the period of Federal control affecting their respective lines, and shall keep and continue such records and furnish like information and reports compiled therefrom.

Any carrier which refuses or obstructs such inspection, or which willfully fails to provide reasonable facilities therefor, or to furnish such information or report shall be liable to a penalty of $500 for each day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action to be brought by the United States.

CAUSES OF ACTION ARISING OUT OF FEDERAL CONTROL.

Sec. 206 (*a*) Actions at law, suits in equity and proceedings in admiralty, based on causes of action arising out of the possession, use, or operation by the President of the railroad or system of transportation of any carrier (under the provisions of the Federal Control Act, or of the Act of August 29, 1916) of such character as prior to Federal control could have been brought against such carrier, may, after the termination of Federal control, be brought against an agent designated by the President for such purpose, which agent shall be designated by the President within thirty days after the passage of this act. Such actions, suits, or proceedings may, within the periods of limitation now prescribed by State or Federal statutes but not later than two years from the date of the passage of this Act, be brought in any court which but for Federal Control would have had jurisdiction of the cause of action had it arisen against such carrier.

(*b*) Process may be served upon any agent or officer of the carrier operating such railroad or system of transportation, if such agent or officer is authorized by law to be served with process in proceedings brought against such carrier and if a contract has been made with such carrier by or through the President for the conduct of litigation arising out of operation during Federal control. If no such contract has been made process may be served upon such agents or officers as may be designated by or through the President. The agent designated by the President under subdivision (*a*) shall cause to be filed, upon the termination of Federal control, in the office of the Clerk of each District Court of the United States, a statement naming all carriers with whom he has contracted for the conduct of litigation arising out of operation during Federal control, and a like statement designating the agents or officers upon whom process may be served in actions, suits, and proceedings arising in respect to railroads or systems of transportation with the owner of which no such contract has been made; and such statements shall be supplemented from time to time, if additional contracts are made or other agents or officers appointed.

(*c*) Complaints praying for reparation on account of damage claimed to have been caused by reason of the collection or enforcement by or through the President during the period of Federal control of rates, fares, charges, classifications, regulations, or practices (including those applicable to interstate, foreign, or

intrastate traffic) which were unjust, unreasonable, unjustly discriminatory, or unduly or unreasonable prejudical, or otherwise in violation of the Interstate Commerce Act, may be filed with the Commission, within one year after the termination of Federal control, against the agent designated by the Presiden under subdivision (*a*), naming in the petition the railroad or system of transportation against which such complaint would have been brought if such railroad or system had not been under Federal control at the time the matter complained of took place. The Commission is hereby given jurisdiction to hear and decide such complaints in the manner provided in the Interstate Commerce Act, and all notices and orders in such proceedings shall be served upon the agent designated by the President under subdivision (*a*).

(*d*) Actions, suits, proceedings, and reparation claims, of the character above described pending at the termination of Federal control shall not abate by reason of such termination, but may be prosecuted to final judgment, substituting the agent designated by the President under subdivision (*a*).

(*e*) Final judgments, decrees, and awards in actions, suits, proceedings, or reparation claims, of the character above described, rendered against the agent designated by the President under subdivision (*a*), shall be promptly paid out of the revolving fund created by section 210.

(*f*) The period of Federal control shall not be computed as a part of the periods of limitation in actions against carriers or in claim for reparation to the Commission for causes of action arising prior to Federal control.

(*g*) No execution or process, other than on a judgment recovered by the United States against a carrier, shall be levied upon the property of any carrier where the cause of action on account of which the judgment was obtained grew out of the possession, use, control, or operation of any railroad or system of transportation by the President under Federal control.

Sec. 207. (*a*) As soon as practicable after the termination of Federal control the President shall ascertain (1) the amount of the indebtedness of each carrier to the United States, which may exist at the termination of Federal control, incurred for additions and betterments made during Federal control and properly chargeable to capital accounts; (2) the amount of indebtedness of such carrier to the United States otherwise incurred; and (3) the amount of the indebtedness of the United States to such carrier arising out of Federal control. The amount under clause (3) may be set off against either or both of the amounts under clauses (1) and (2), so far as deemed wise by the President, but only to the extent permitted under any contract now or hereafter made between such carrier and the United States in respect to the matters of Federal control, or, where no

such contract exists, to the exent permitted under paragraph (*b*) of section 7 of the standard contract between the United States and the carriers relative to deductions from compensation: Provided, That such right of set-off shall not be so exercised as to prevent such carriers from having the sums required for interest, taxes, and other corporate charges and expenses referred to in paragraph (*b*) of section 7 of such standard contract, accruing during Federal control, and also the sums required for dividends declared and paid during Federal control, including, also in addition, a sum equal to that proportion of such last dividend which the period between its payment and the termination of Federal control bears to the last regular dividend period: and, provided further, That such right of set-off shall not be exercised unless there shall have first been paid such sums in addition as may be necessary to provide the carrier with working capital in amount not less than one twenty-fourth of its operating expenses for the calendar year 1919.

(*b*) Any remaining indebtedness of the carrier to the United States in respect to such additions and betterments shall, at the request of the carrier, be funded for a period of ten years from the termination of Federal control, or a shorter period at the option of the carrier, with interest at the rate of 6 per centum per annum, payable semiannually, subject to the right of such carrier to pay, on any interest-payment day, the whole or any part of such indebtedness. Any carrier obtaining the funding of such indebtedness as aforesaid shall give, in the discretion of the President, such security, in such form and upon such terms, as he may prescribe.

(*c*) If the President and the various carriers, or any of them, shall enter into an agreement for funding, through the medium of car trust certificates, or otherwise, the indebtedness of any such carrier to the United States incurred for equipment ordered for the benefit of such carrier, such indebtedness so funded shall not be refundable under the foregoing provisions.

(*d*) Any other indebtedness of any such carrier to the United States which may exist after the settlement of accounts between the United States and the carrier and is then due shall be evidenced by notes payable in one year from the termination of Federal control, or a shorter period at the option of the carrier, with interest at the rate of 6 per centum per annum, and secured by such collateral security as the President may deem it advisable to require.

(*e*) With respect to any bonds, notes, or other securities, acquired under the provisions of this section or of the Federal Control Act or of the Act entitled "An Act to provide for the reimbursement of the United States for motive power, cars and other

equipment ordered for railroads and systems of transportation under Federal control, and for other purposes." approved November 19, 1919, the President shall have the right to make such arrangements for extension of the time of payment or for the exchange of any of them for other securities, or partly for cash and partly for securities, as may be provided for in any agreement entered into by him or as may in his judgment seem desirable.

(*f*) Carriers may, by agreement with the President, issue notes or other evidences of indebtedness, secured by equipment trust agreements, for equipment purchased during Federal control by or through the President under section 6 of the Federal Conrol Act, and allocated to such carriers respectively; and the filing of such equipment trust agreements with the Commission shall constitute notice thereof to all the world.

(*g*) A carrier may issue evidences of indebtedness pursuant to this section without the authorization or approval of any authority, State or Federal, and without compliance with any requirement, State or Federal, as to notification.

EXISTING RATES TO CONTINUE IN EFFECT.

*Sec. 208.* (*a*) All rates, fares, and charges, and all classifications, regulations, and practices, in any wise changing, affecting, or determining, any part of the aggregate of rates, fares, or charges, or the value of the service rendered, which on February 29, 1920, are in effect on the lines of carriers subject to the Interstate Commerce Act, shall continue in force and effect until thereafter changed by State or Federal authority, respectively, or pursuant to authority of law; but prior to September 1, 1920, no such rate, fare, or charge shall be reduced, and no such classification, regulation, or practice shall be changed in such manner as to reduce any such rate, fare, or charge, unless such reduction or change is approved by the Commission.

(*b*) All divisions of joint rates, fares, or charges, which on February 29, 1920, are in effect between the lines of carriers subject to the Interstate Commerce Act, shall continue in force and effect until thereafter changed by mutual agreement between the interested carriers, or by State or Federal authorities, respectively.

(*c*) Any land grant railroad organized under the Act of July 28, 1866 (chapter 300), shall receive the same compensation for transportation of property and troops of the United States as is paid to land grant railroads organized under the Land Grant Act of March 3, 1863, and the Act of July 27, 1866 (chapter 278).

GUARANTY TO CARRIERS AFTER TERMINATION OF FEDERAL CONTROL.

*Sec. 209.* (*a*) When used in this section—

The term "carrier" means (1) a carrier by railroad or partly by railroad and partly by water, whose railroad or system of transportation is under Federal control at the time Federal control terminates, or which has heretofore engaged as a common carrier in general transportation and competed for traffic, or connected, with a railroad at any time under Federal control; and (2) a sleeping car company whose system of transportation is under Federal control at the time Federal control terminates; but does not include a street or interurban electric railway not under Federal control at the time Federal control terminates, which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic or sale of power, heat, and light, or both;

The term "guaranty period" means the six months beginning March 1, 1920.

The term "test period" means the three years ending June 30, 1917; and

The term "railway operating income" and other references to accounts of carriers by railroad shall, in the case of a sleeping car company, be construed as indicating the appropriate corresponding accounts in the accounting system prescribed by the Commission.

(*b*) This section shall not be applicable to any carrier which does not on or before March 15, 1920, file with the Commission a written statement that it accepts all the provisions of this section.

(*c*) The United States hereby guarantees—

(1) With respect to any carrier with which a contract (exclusive of so-called cooperative contracts or waivers) has been made fixing the amount of just compensation under the Federal Control Act, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than one-half the amount named in such contract as annual compensation, or, where the contract fixed a lump sum as compensation for the whole period of Federal operation, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than an amount which shall bear the same proportion to the lump sum so fixed as six months bears to the number of months during which such carrier was under Federal operation, including in both cases the increase in such compensation provided for in section 4 of the Federal Control Act;

(2) With respect to any carrier entitled to just compensation under the Federal Control Act, with which such a contract has not been made, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than one-half of the annual amount estimated by the President as just

compensation for such carrier under the Federal Control Act, including the increases in such compensation provided for in section 4 of the Federal Control Act. If any such carrier does not accept the President's estimate respecting its just compensation, and if in proceedings under section 3 of the Federal Control Act it is determined that a larger or smaller annual amount is due as just compensation, the guaranty under this paragraph shall be increased or decreased accordingly;

(3) With respect to any carrier, whether or not entitled to just compensation under the Federal Control Act, with which such a contract has not been made, and for which no estimate of just compensation is made by the President, and which for the test period as a whole sustained a deficit in railway operating income, the guaranty shall be a sum equal to (*a*) the amount by which any deficit in its railway operating income for the guaranty period as a whole exceeds one-half of its average annual deficit in railway operating income for the test period, plus (*b*) an amount equal to one-half the annual sum fixed by the President under section 4 of the Federal Control Act;

(4) With respect to any carrier not entitled to just compensation under the Federal Control Act, which for the test period as a whole had an average annual railway operating income, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than one-half the average annual railway operating income of such carrier during the test period.

(*d*) If for the guaranty period as a whole the railway operating income of any carrier entitled to a guaranty under paragraph (1), (2), or (4) of subdivision (*c*) is in excess of the minimum railway operating income guaranteed in such paragraph, such carrier shall forthwith pay the amount of such excess into the Treasury of the United States. If for the guaranty period as a whole the railway operating income of any carrier entitled to a guaranty under paragraph (3) of subdivision (*c*) is in excess of one-half of the annual sum fixed by the President with respect to such carrier under section 4 of the Federal Control Act, such carrier shall forthwith pay the amount of such excess into the Treasury of the United States. The amounts so paid into the Treasury of the United States shall be added to the funds made available under section 202 for the purposes indicated in such section. Notwithstanding the provisions of this subdivision, any carrier may retain out of any such excess any amount necessary to enable it to pay its fixed charges accruing during the guaranty period.

(*e*) For the purposes of this section railway operating income, or any deficit therein, for the test period shall be computed in the manner provided for in section 1 of the Federal Control Act.

(*f*) In computing railway operating income, or any deficit therein, for the guaranty period for the purpose of this section—

(1) Debits and credits arising from the accounts, called in the monthly reports to the Commission equipment rents and joint facility rents, shall be included, but debits and credits arising from the operation of such street electric passenger railways, including railways commonly called interurbans, as are not under Federal control at the time of termination thereof, shall be excluded;

(2) Proper adjustments shall be made (*a*) in case any lines which were during any portion of the period of Federal control, a part of the railroad or system of transportation of the carrier, and whose railway operating income was included in such income of the carrier for the test period, do not continue to be a part of such railroad or system of transportation during the entire guaranty period, and (*b*) in case of any lines acquired by, leased to, or consolidated with, the railroad or system of transportation of the carrier at any time since the end of the test period and prior to the expiration of the guaranty period, for which separate operating returns to the Commission are not made in respect to the entire portion of the guaranty period;

(3) There shall not be included in operating expenses, for maintenance of way and structures, or for maintenance of equipment, more than an amount fixed by the Commission. In fixing such amount the Commission shall so far as practicable apply the rule set forth in the proviso in paragraph (*a*) of section 5 of the "standard contract" between the United States and the carriers (whether or not such contract has been entered into with the carrier whose railway operating income is being completed);

(4) There shall not be included any taxes paid under Title I or II of the Revenue Act of 1917, or such portion of the taxes paid under Title II or III of the Revenue Act of 1918 as by the terms of such Act are to be treated as levied by an Act in amendment of Title I or II of the Revenue Act of 1917; and

(5) The Commission shall require the elimination and restatement of the operating expenses and revenues (other than for maintenance of way and structures, or maintenance of equipment) for the guaranty period, to the extent necessary to correct and exclude any disproportionate or unreasonable charge to such expense or revenues for such period, or any charge to such expenses or revenues for such period which under a proper system of accounting is attributable to another period.

(*g*) The Commission shall, as soon as practicable after the expiration of the guaranty period, ascertain and certify to the Secretary of the Treasury the several amounts necessary to make good the foregoing guaranty to each carrier. The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of each such carrier upon the Treasury

of the United States, for the amount shown in such certificate as necessary to make good such guaranty. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated.

(*h*) Upon application of any carrier to the Commission, asking that during the guaranty period there may be advanced to it from time to time such sums, not in excess of the estimated amount necessary to make good the guaranty, as are necessary to enable it to meet its fixed charges and operating expenses, the Commission may certify to the Secretary of the Treasury the amount of, and times at which, such advances, if any, shall be made. The Secretary of the Treasury, on receipt of such certificate, is authorized and directed to make the advances in the amounts and at the times specified in the certificate, upon the execution by the carrier of a contract, secured in such manner as the Secretary may determine, that upon final determination of the amount of the guaranty provided for by this section such carrier will repay to the United States any amounts which it has received from such advances in excess of the guaranty, with interest at the rate of 6 per centum per annum from the time such excess was paid. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, a sum sufficient to enable the Secretary of the Treasury to make the advances referred to in this subdivision

(i) If the American Railway Express Company shall, on or before March 15, 1920, file with the Commission a written statement that it accepts all the provisions of this subdivision, the contract of June 26, 1918, between such company and the Director General of Railroads, as amended and continued by agreement dated November 21, 1918, shall remain in full force and effect during the guaranty period in so far as the same constitutes a guaranty on the part of the United States to such company against a deficit in operating income.

In computing operating income, and any deficit therein, for the guaranty period for the purposes of this subdivision, the Commission shall require the elimination and restatement of the operating expenses and revenues for the guaranty period, to the extent necessary to correct and exclude any disproportionate or unreasonable charge to such expenses or revenues for such period, or any charge to such expenses or revenues for such period which under a proper system of accounting is attributable to another period, and to exclude from operating expenses so much of the charge for payment for express privileges to carriers on whose lines the express traffic is carried as is in excess of 50.25 per centum of gross express revenue.

For the guaranty period the American Railway Express Company shall pay to every carrier which accepts the provisions of this section, as provided in subdivision (*b*) hereof, 50.25 per

centum of the gross revenue earned on the transportation of all its express traffic on the carrier's lines, and every such carrier shal accept from the American Railway Express Company such percentage of the gross revenue as its compensation. In arriving at the gross revenue on through or joint express traffic, the method of dividing the revenue between the carrier shall be that agreed upon between the carriers and such express company and approved by the Commission.

If for the guaranty period as a whole the American Railway Express Company does not have a deficit in operating income, it shall forthwith pay the amount of its operating income for such period into the Treasury of the United States. The amount so paid shall be added to the funds made available under section 202 for the purposes indicated in such section.

The Commission shall, as soon as practicable after the expiration of the guaranty period, certify to the Secretary of the Treasury the amount necessary to make good the foregoing guaranty to the American Railway Express Company. The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of such company upon the Treasury of the United States for the amount shown in such certificate as necessary to make good such guaranty. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated.

Upon application of the American Railway Express Company to the Commission, asking that during the guaranty period there may be advanced to it from time to time such sums, not in excess of the estimated amount necessary to make good the guaranty, as are necessary to enable it to meet its operating expenses, the Commission may certify to the Secretary of the Treasury the amount of, and times at which, such advances, if any, shall be made. The Secretary of the Treasury, on receipt of such certificate, is authorized and directed to make the advances in the amounts and at the times specified in the certificate, upon the execution by such company of a contract, secured in such manner as the Secretary may determine, that upon final determination of the amount of the guaranty provided for by this subdivision such company will repay to the United States any amounts which it has received from such advances in excess of the guaranty, with interest at the rate of 6 per centum per annum from the time such excess was paid. There is hereby appropriated out of any money in the Treasury not otherwise appropriated a sum sufficient to enable the Secretary of the Treasury to make the advances referred to in this subdivision.

NEW LOANS TO RAILROADS.

Sec. 210. (*a*) For the purpose of enabling carriers by railroad subject to the Interstate Commerce Act properly to serve

the public during the transition period immediately following the termination of Federal control, any such carrier may, at any time after the passage of this Act, and before the expiration of two years after the termination of Federal control make application to the commission for a loan from the United States to meet its maturing indebtedness, or to provide itself with equipment or other additions and betterments, setting forth the amount of the loan; the term for which it is desired; the purpose of the loan and the use to which it will be applied; the present and prospective ability of the applicant to repay the loan and meet the requirements of its obligations in that regard; the character and value of the security offered; and the extent to which the public convenience and necessity will be served. The application shall be accompanied by statements showing such facts in detail as the commission may require with respect to the physical situation, operation ownership, capitalization, indebtedness, contract obligations, and earning power of the applicant, together with such other facts relating to the propriety and expediency of granting the loan applied for, and the ability of the applicant to make good gation as the commission may deem pertinent to the inquiry.

"(*b*) If the commission, after such hearing and investigation, with or without notice, as it may direct, finds that the making, in whole or in part, of the proposed loan by the United States, for one or more of the aforesaid purposes, is necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant and the character and value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor, and to meet its other obligations in connection with such loan the commission shall certify to the Secretary of the Treasury its findings of such facts; also the amount of the loan which is to be made; the time, not exceeding fifteen years from the making thereof, within which it is to be repaid; the terms and conditions of the loan, including the security to be given for repayment; that the prospective earning power of the applicant, together with the character and value of the security offered, furnish, in the opinion of the commission, reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor and reasonable protection to the United States; and that the applicant, in the opinion of the commission, is unable to provide itself with the funds necessary for the aforesaid purposes from other sources.

"(*c*) Upon receipt of such certificate from the commission the Secretary of the Treasury shall immediately, or as soon as practicable, make a loan of the amount recommended in such

certificate out of any funds in the revolving fund provided for in this section and accept the security prescribed therefor by the commission. All such loans shall bear interest at the rate of 6 per centum per annum, payable semi-annually, to the Secretary of the Treasury, and to be placed to the credit of said revolving fund. The form of obligation to be entered into shall be prescribed by the Secretary of the Treasury, but the time, not exceeding fifteen years from the making thereof, within which such loan is to be repaid, the security which is to be taken therefor, and the terms and the conditions of the loan shall be in accordance with the findings and the certificate of the commission."

The loans for equipment authorized by section 210, Transportation Act, 1920, may be made to or through such organization, car trust or other agency as may be determined upon or approved or organized for the purpose by the commission as most appropriate in the public interest for the construction, and sale or lease of equipment to carriers, upon such general terms as to security and payment or lease as provided in this section or in subsections 11 and 13 of section 422 of the Transportation Act, 1920.

(*d*) The Commission or the Secretary of the Treasury may call upon the Federal Reserve Board for advice and assistance with respect to any such application or loan.

(*e*) There is hereby appropriated out of any moneys in the Treasury not otherwise appropriated the sum of $300,000,000, which shall be used as a revolving fund for the purpose of making the loans provided for in this section, and for paying the judgments, decrees, and awards referred to in subdivision (*e*) of section 206.

(*f*) A carrier may issue evidences of indebtedness to the United States pursuant to this section without the authorization or approval of any authority, State or Federal, and without compliance with any requirement, State or Federal, as to notification.

Section 210 of Transportation Act as amended by Act April 1, 1920.

EXECUTION OF POWERS OF PRESIDENT.

Sec. 211. All powers and duties conferred or imposed upon the President by the preceding sections of this Act, except the designation of the agent under section 206, may be executed by him through such agency or agencies as he may determine.

Conforming to this statute, the President issued his proclamation as follows:

Whereas Section 206 of the act approved Feb. 28, 1920, entitled "An Act to provide for the termination of Federal con-

trol of railroads and systems of transportation; to provide for the settlement of disputes between carriers and their employees: to further amend an act entitled 'An Act to regulate commerce,' approved Feb. 4, 1887, as amended, and for other purposes,'' provides that the President shall within thirty (30) days after the passage of said act designate an agent against whom shall be brought actions at law, suits in equity, and proceedings in admiralty, based on causes of action arising out of the possession, use or operation by the President of the railroad or system of transportation of any carrier (under the provisions of the Federal control act, or of the Act of August 29, 1916) of such character as prior to Federal control could have been brought against such carrier.

Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the power and authority to vested in me by said act, and all other powers me here to enabling, do hereby designate and appoint Walker D. Hines, Director General of Railroads, and his successor in office, as the agent provided in Section 206 of said act, approved Feb. 28, 1920.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done by the President in the District of Columbia this eleventh day of March, in the year of our Lord, nineteen hundred and twenty, and of the independence of the United States the one hundred and forty-fourth.

Thereafter on March 18, 1920 the Commission issued rules as follows:

The Commission having under consideration Section 206 of the Transportation Act, 1920, and the Proclamation of the President, dated March 11, 1920, wherein he designated Walker D. Hines, Director-General of Railroads, as the agent referred to in said Section 206; and said Walker D. Hines having consented to and requested the substitution of himself as such agent for himself as Director-General of Railroads in all reparation claims of the character described in subdivision (*c*) of said section 206, pending at the termination of Federal control as provided in subdivision (*d*) of said section, or upon which complaints praying for reparation may have been or may be filed with the Commission within one year after the termination of

federal control as provided in subdivision (*c*) of said section.

"It is ordered, That in all proceedings before the Commission upon complaint praying for reparation for any cause set forth in subdivision (*c*) of said section 206, which were pending at the termination of Federal control, or which have been or may be filed with the Commission within one year after the termination of federal control, as provided in section 206, whether said complaints be formal or informal, or filed as applications upon the special docket, wherein said Walker D. Hines, Director-General of Railroads, as agent, be and he hereby is substituted as a defendant in place of himself as Director-General of Railroads, for all intents and purposes of said section 206.

"It is further ordered, That this order be and it hereby is made a part of each such proceeding, and that a copy of this order be filed in the docket for each such proceeding."

The second order, concerning procedure to be followed as to causes of action arising out of federal control, is as follows:

(1) Except as hereinafter provided, proceedings upon causes of action arising out of Federal Control will be governed by the Commission's Rules of Practice, in so far as applicable.

(2) Attention is directed to subdivisions (*a*), (*c*), (*d*), (*e*), and (*f*) of Section 206 of the Transportation Act, 1920:

(*a*) Actions at law, suits in equity and proceedings in admiralty, based on causes of action arising out of the possession, use, or operation by the President of the railroad or system of transportation of any carrier (under the provisions of the Federal Control Act, or of the Act of August 29, 1916) of such character as prior to Federal control could have been brought against such carrier, may after the termination of Federal control, be brought against an agent designated by the President for such purpose, which agent shall be designated by the President within thirty days after the passage of this Act. Such actions, suits, or proceedings may, within the periods of limitation now prescribed by the State or Federal statutes but not later than two years from the date of the passage of this Act. be brought in any court which but for Federal control would have had jurisdiction of the cause of action had it arisen against such carriers.

(*c*) Complaints praying for reparation on account of damage claimed to have been caused by reason of the collection or enforcement by or through the President during the period of Federal control of rates, fares, charges, classifications, regulations, or practices (including those applicable to interstate, foreign, or intrastate traffic) which were unjust, unreasonable, un-

justly discriminatory, or unduly or unreasonably prejudicial, or otherwise in violation of the Interstate Commerce Act, may be filed with the Commission, within one year after the termination of Federal control, against the agent designated by the President under subdivision (*a*), naming in the petition the railroad or system of transportation against which such complaint would have been brought if such railroad or system had not been under Federal control at the time the matter complained of took place. The Commission is hereby given jurisdiction to hear and decide such complaints in the manner provided in the Interstate Commerce Act, and all notices and orders in such proceedings shall be served upon the agent designated by the President under subdivision (*a*).

(*d*) Actions, suits, proceedings, and reparation claims, of the character above described pending at the termination of Federal control shall not abate by reason of such termination, but may be prosecuted to final judgment, substituting the agent designated by the President under subdivision (*a*).

(*e*) Final judgments, decrees, and awards in actions, suits, proceedings, or reparation claims, of the character above described, rendered against the agent designated by the President under subdivision (*a*), shall be promptly paid out of the revolving fund created by section 210.

(*f*) The period of Federal control shall not be computed as a part of the periods of limitation in actions against carriers or in claims for reparation to the Commission for causes of action arising prior to Federal control.

(3) On March 11, 1920, the President, under the provisions of section 206 of the Transportation Act, 1920, designated Walker D. Hines, Director General of Railroads, and his successor in office, as the agent provided for in that section. The Commission, by General Order dated March 18, 1920, substituted Walker D. Hines, Director General of Railroads, as Agent, for Walker D. Hines, Director General of Railroads, in all proceedings before the Commission upon complaints praying for reparation for any cause set forth in subdivision (*c*) of said section 206, which were pending at the termination of Federal control, or which have been or may be filed with the Commission within one year after the termination of Federal control, as provided in said section 206, wherein said Walker D. Hines, Director General of Railroads, was or is named as a defendant.

(4) If in any complaint so pending the complainant alleges that the rates, fares, charges, classifications, regulations, or practices complained of are (or) (and) will be in violation of

any provision of the Interstate Commerce Act and seeks relief therefrom for the future, and the carriers over whose lines the rates, fares, charges, classifications, regulations or practices complained of apply are not already defendants, the complainant should promptly file with the Commission a supplemental complaint containing appropriate allegations and naming said carriers as additional defendants, together with copies of the supplemental complaint in sufficient number for service upon all parties to the proceedings, including the new defendants named, and also 3 additional copies for the use of the Commission. Service thereof will be made by the Commission. If within 20 days after such service the new defendants do not notify the Commission of their desire for resetting of a hearing already set, or for further hearing if hearing has already been had, it will be understood that no resetting or further hearing is desired.

(5) Where the complaint seeks only reparation for a cause of action arising prior to Federal Control the participating carrier or carriers must be made parties defendant, but neither the Director General nor the agent designated by the President is a necessary party.

(6) Where the complaint seeks only reparation for any cause set forth in subdivision (*c*) the agent designated by the President is the only necessary party defendant, but the carriers whose railroads or systems of transportation were under Federal Control and over which the rates, etc, applied, should be specified in an appropriate place in the body of the complaint. (See Form 6, Rules of Practice.)

(7) Where the complaint seeks only the establishment of rates for the future the individual carriers must be named as defendants. Neither the Director General nor the agent designated by the President should be so named.

(8) Where the complaint seeks reparation for any cause set forth in subdivision (*c*) and also the establishment of rates for the future, both the agent designated by the President and the carriers should be named as defendants.

George B. McGinty,
Secretary.

## *APPENDIX TWO.*

## TITLE III.—TRANSPORTATION ACT 1920 RELATING TO CARRIER EMPLOYEES.

## TITLE III.—DISPUTES BETWEEN CARRIERS AND THEIR EMPLOYEES AND SUBORDINATE OFFICIALS.

Sec. 300. When uesd in this title—

(1) The term "carrier" includes any express company, sleeping car company, and any carrier by railroad, subject to the Interstate Commerce Act, except a street, interurban, or suburban electric railway not operating as a part of a general steam railroad system of transportation;

(2) The term "Adjustment Board" means any Railroad Board of Labor Adjustment established under section 302;

(3) The term "Labor Board" means the Railroad Labor Board;

(4) The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation; and

(5) The term "subordinate official" includes officials of carriers of such class or rank as the Commission shall designate by regulation formulated and issued after such notice and hearing as the Commission may prescribe, to the carriers, and employees and subordinate officials of carriers, and organizations thereof, directly to be affected by such regulations.

Sec. 301. It shall be the duty of all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the board which under the provisions of this title is authorized to hear and decide such dispute.

Sec. 302. Railroad Boards of Labor Adjustment may be established by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees or subordinate

officials of carriers, or organization or group of organizations thereof.

Sec. 303. Each such Adjustment Board shall, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon the written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, (3) upon the Adjustment Board's own motion, or (4) upon the request of the Labor Board whenever such board is of the opinion that the dispute is likely substantially to interrupt commerce, receive for hearing, and as soon as practicable and with due diligence, decide any dispute involving only grievances, rules, or working conditions, not decided as provided in section 301, between the carrier and its employees or subordinate officials, who are or any organization thereof which is, in accordance with the provisions of section 302, represented upon any such Adjustment Board.

Sec. 304. There is hereby established a board to be known as the "Railroad Labor Board" and to be composed of nine members as follows:

(1) Three members constituting the labor group, representing the employees and subordinate officials of the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by such employees in such manner as the Commission shall by regulation prescribe;

(2) Three members, constituting the management group, representing the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by the carriers in such manner as the Commission shall by regulation prescribe; and

(3) Three members, constituting the public group, representing the public, to be appointed directly by the President, by and with the advice and consent of the Senate.

Any vacancy on the Labor Board shall be filled in the same manner as the original appointment.

Sec. 305. If either the employees or the carriers fail to make nominations and offer nominees in accordance with the regulations of the Commission, as provided in paragraphs (1) and (2) of section 304, within thirty days after the passage of this Act in case of any original appointment to the office of member of the Labor Board, or in case of a vacancy in any such office within fifteen days after such vacancy occurs, the President shall thereupon directly make the appointment, by and with the advice and consent of the Senate. In making any such appointment the President shall, as far as he deems it practicable, select an individual associated in interest with

the carriers or employees thereof, whichever he is to represent.

Sec. 306. (*a*) Any member of the Labor Board who during his term of office is an active member or in the employ of or holds any office in any organization of employees or subordinate officials, or any carrier, or owns any stock or bond thereof, or is pecuniarily interested therein, shall at once become ineligible for further membership upon the Labor Board; but no such member is required to relinquish honorary membership in, or his rights in any insurance or pension or other benefit fund maintained by, any organization of employees or subordinate officials or by a carrier

(*b*) Of the original members of the Labor Board, one from each group shall be appointed for a term of three years, one for two years, and one for one year. Their successors shall hold office for terms of five years, except that any member appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Each member shall receive from the United States an annual salary of $10,000. A member may be removed by the President for neglect of duty or malfeasance in office, but for no other cause.

Sec. 307. (*a*) The Labor Board shall hear, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions, in respect to which any Adjustment Board certifies to the Labor Board that in its opinion the Adjustment Board has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board has so failed or is not using due diligence in its consideration thereof. In case the appropriate Adjustment Board is not organized under the provisions of section 302, the Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions which is not decided as provided in section 301 and which such Adjustment Board would be required to receive for hearing and decision under the provisions of section 303.

(*b*) The Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly in-

terested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, all disputes with respect to the wages or salaries of employees or subordinate officials of carriers, not decided as provided in section 301. The Labor Board may upon its own motion within ten days after the decision, in accordance with the provisions of section 301, of any dispute with respect to wages or salaries of employees or subordinate officials of carriers, suspend the operation of such decision if the Labor Board is of the opinion that the decision involves such an increase in wages or salaries as will be likely to necessitate a substantial readjustment of the rates of any carrier. The Labor Board shall hear any decision so suspended and as soon as practicable and with due diligence decide to affirm or modify such suspended decision.

(*c*) A decision by the Labor Board under the provisions of paragraphs (*a*) or (*b*) of this section shall require the concurrence therein of at least 5 of the 9 members of the Labor Board: Provided, That in case of any decision under paragraph (*b*), at least one of the representatives of the public shall concur in such decision. All decisions of the Labor Board shall be entered upon the records of the board and copies thereof, together with such statement of facts bearing thereon as the board may deem proper, shall be immediately communicated to the parties to the dispute, the President, each Adjustment Board, and the Commission, and shall be given further publicity in such manner as the Labor Board may determine.

(*d*) All the decisions of the Labor Board in respect to wages or salaries and of the Labor Board or an Adjustment Board in respect to working conditions of employees or subordinate officials of carriers shall establish rates of wages and salaries and standards of working conditions which in the opinion of the board are just and reasonable. In determining the justness and reasonableness of such wages and salaries or working conditions the board shall, so far as applicable, take into consideration among other relevant circumstances:

(1) The scales of wages paid for similar kinds of work in other industries;

(2) The relation between wages and the cost of living;

(3) The hazards of the employment;

(4) The training and skill required;

(5) The degree of responsibility;

(6) The character and regularity of the employment; and

(7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments.

Sec. 308. The Labor Board—

(1) Shall elect a chairman by majority vote of its members;

(2) Shall maintain central offices in Chicago, Illinois, but the Labor Board may, whenever it deems it necessary meet at such other places as it may determine;

(3) Shall investigate and study the relations between carriers and their employees, particularly questions relating to wages, hours of labor, and other conditions of employment and the respective privileges, rights, and duties of carriers and employees, and shall gather, compile, classify, digest, and publish, from time to time, data and information relating to such questions to the end that the Labor Board may be properly equipped to perform its duties under this title and that the members of the Adjustment Boards and the public may be properly informed;

(4) May make regulations necessary for the efficient execution of the functions vested in it by this title; and

(5) Shall at least annually collect and publish the decisions and regulations of the Labor Board and the Adjustment Boards and all court and administrative decisions and regulations of the Commission in respect to this title, together with a cumulative index-digest thereof.

Sec. 309. Any party to any dispute to be considered by an Adjustment Board or by the Labor Board shall be entitled to a hearing either in person or by counsel.

Sec. 310. (*a*) For the efficient adminstration of the functions vested in the Labor Board by this title, any member thereof may require, by subpœna issued and signed by himself, the attendance of any witness and the production of any book. paper, document, or other evidence from any place in the United States at any designated place of hearing, and the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed to by the deponent. Any member of the Labor Board may administer oaths and examine any witness. Any witness summoned before the board and any witness whose deposition is taken shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(*b*) In case of failure to comply with any subpœna or in case of the contumacy of any witness appearing before the Labor Board, the board may invoke the aid of any United States district court. Such court may thereupon order the witness to comply with the requirements of such subpœna, or to give evidence touching the matter in question, as the case may be. Any failure to obey such order may be punished by such court as a contempt thereof.

(*c*) No person shall be excused from so attending and testifying or deposing, nor from so producing any book, paper, document, or other evidence on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, as to which in obedience to a subpœna and under oath, he may so testify or produce evidence, documentary or otherwise. But no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 311. (*a*) When necessary to the efficient administration of the functions vested in the Labor Board by this title, any member, officer, employee, or agent thereof, duly authorized in writing by the board, shall at all reasonable times for the purpose of examination have access to and the right to copy any book, record, paper, or correspondence relating to any matter which the board is authorized to consider or investigate. Any person who upon demand refuses any duly authorized member, officer, employee, or agent of the Labor Board such right of access or copying, or hinders, obstructs, or resists him in the exercise of such right, shall upon conviction thereof be liable to a penalty of $500 for each such offense. Each day during any part of which such offenses continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

(*b*) Every officer or employee of the United States, whenever requested by any member of the Labor Board or an Adjustment Board duly authorized by the board for the purpose,

shall supply to such board any data or information pertaining to the administration of the functions vested in it by this title, which may be contained in the records of his office.

(c) The President is authorized to transfer to the Labor Board any books, papers, or documents pertaining to the administration of the functions vested in the board by this title, which are in the possession of any agency, or railroad board of adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act and which are no longer necessary to the administration of the affairs of such agency.

Sec. 312. Prior to September 1, 1920, each carrier shall pay to each employee or subordinate official thereof wages or salary at a rate not less than that fixed by the decision of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act, in effect in respect to such employee or subordinate official immediately preceding 12.01 a. m. March 1, 1920. Any carrier acting in violation of any provision of this section shall upon conviction thereof be liable to a penalty of $100 for each such offense. Each such action with respect to any such employee or subordinate official and each day or portion thereof during which the offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

Sec. 313. The Labor Board, in case it has reason to believe that any decision of the Labor Board or of an Adjustment Board is violated by any carrier, or employee or subordinate official, or organization thereof, may upon its own motion after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine.

Sec. 314. The Labor Board may (1) appoint a secretary, who shall receive from the United States an annual salary of $5,000; and (2) subject to the provisions of the civil-service laws, appoint and remove such officers, employees, and agents; and make such expenditures for rent, printing, telegrams.

telephone, law books, books of reference, periodicals, furniture, stationery, office equipment, and other supplies and expenses, including salaries, traveling expenses of its members, secretary, officers, employees, and agents, and witness fees, as are necessary for the efficient execution of the functions vested in the board by this title and as may be provided for by Congress from time to time. All of the expenditures of the Labor Board shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the chairman of the Labor Board.

Sec. 315. There is hereby appropriated for the fiscal year ending June 30, 1920, out of any money in the Treasury not otherwise appropriated, the sum of $50,000, or so much thereof as may be necessary, to be expended by the Labor Board, for defraying the expenses of the maintenance and establishment of the board, including the payment of salaries as provided in this title.

Sec. 316. The powers and duties of the Board of Mediation and Conciliation created by the Act approved July 15, 1913; shall not extend to any dispute which may be received for hearing and decision by any Adjustment Board or the Labor Board.

The Commission has issued its rulings as follows:

"Paragraph 5 of section 300 of the Transportation Act, 1920, provides:

(5) The term "subordinate official" includes officials of carriers of such class or rank as the Commission shall designate by regulation formulated and issued after such notice and hearing as the Commission may prescribe to the carriers, and employees and subordinate officials of carriers, and organizations thereof, directly to be affected by such regulations.

"Public hearing having been had on March 15, 1920, 'for the purpose of determining what classes of officials of carriers shall be included within the term "subordinate official," as that term is used in section 300 to 313, both inclusive, of said Transportation Act, 1920,' the Commission prescribes that the term 'subordinate official' " as used in said portions of said act shall include the following:

Claim Agents. This class shall include district claim agents and those lower in rank, who are not vested with authority

to settle claims, with or without limit, or to bind the company to pay claims, without securing such authority after reporting to a superior officer.

Engineers of Mechanics. This class shall include civil engineers inferior in rank to engineers of maintenance of way. chief engineers and division engineers, draughtsmen, engineers of maintenance of way, and other engineers of mechanics who are not vested with authority to employ, discipline or dismiss subordinates.

Foremen. This class shall include foremen of mechanics. shops, tracks, bridges, etc., who are not vested with authority to employ, discipline or dismiss employees or to make purchases. It does not include general storekeepers or assistant storekeepers.

Supervisors of Signals. This class shall include those who are employed as supervisors of signals with rank below the grade of assistant supervisor of signals.

Yard Masters. This class shall include yard masters and assistant yard masters who are not vested with authority to employ, discipline or dismiss employees. It does not include general yard masters at large and important switching centers where of necessity such general yard master is vested with responsibilities and authority that stamp him as an official.

Train Dispatchers. This class shall include train dispatchers who are not vested with the authority to employ, discipline or dismiss employees.

Storekeepers. This class shall include storekeepers or foremen of stores who are not vested with authority to employ, discipline or dismiss employees or to make purchases. It does not include general storekeepers or assistant storekeepers.

"The above definitions include all of the classes of employees whose claims to recognition as 'subordinate officials' were presented at the hearing, except traveling auditors and supervisory station agents. The traveling auditors have a fiduciary relationship to the company. Their duties and responsibilities vary, but all partake of the same specific relationship of trust. The supervisory station agents are those who have supervision of the work of other station employees. They cover the range from the station where one employee other than the agent is employed to the agents at the largest and most important points. They are the official and responsible representatives of the company in its relationships with the public and fre-

quently in a legal sense. Their compensation naturally varies with the responsibilities of their positions. It is not believed that either of these classes can be consistently included within the term 'subordinate official,' as that term is used in Title III of the Transportation Act 1920.

"The list of subordinate officials above prescribed may be enlarged or restricted after due notice and hearing if and when occasion warrants." On March 8, 1920, acting under authority of section 305 Transportation Act 1920, the Commission ordered:

"For the purpose of making and offering nominations for original appointment as members of the labor group on the labor board the Commission prescribes that the organizations of employees shall be grouped as follows.

Group 1—Brotherhood of Locomotive Engineers.
Brotherhood of Locomotive Firemen and Enginemen.
Order of Railway Conductors.
Brotherhood of Railroad Trainmen.
Switchmen's Union of North America.

Group 2—International Association of Machinists.
International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.
International Brotherhood of Blacksmiths, Drop Forgers and Helpers.
Amalgamated Sheet Metal Workers, International Alliance.
Brotherhood Railway Carmen of America.
International Brotherhood of Electrical Workers.

Group 3—Order of Railroad Telegraphers.
United Brotherhood of Maintenance of Way Employes and Railroad Shop Laborers.
Brotherhood of Railway Signalmen of America.
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.
International Brotherhood of Stationary Firemen and Oilers.

"The accredited representatives of the organization embraced in each group and duly authorized so to act, shall agree among themselves upon nominees representative of the

group, but the three groups must present a total of not less than six nominees.

"The nominations agreed upon by each group shall be signed by the representatives of the several organizations in the group or by some one authorized by them so to act and shall be transmitted direct to the President accompanied by a certificate that the nominations have been made in accordance with these regulations.

"The Association of Railway Executives is representative of approximately 95 per cent of the railroad mileage of the country and is authorized by the carriers' members thereof to speak for and represent them in matters of this kind. The officers of that association have consulted with most of the carriers not members of the association and secured their assent to the presentation of nominees by the association.

"For the purpose of presenting nominees for original appointment on the Labor Board to represent the management group the Commission prescribes that such nominations, not less than six in number, shall be made and offered by the Association of Railway Executives.

"The nominations so made shall be transmitted to the President accompanied by a certificate that they have been made in accordance with these regulations.

"The Act provides in section 304 that any vacancy on the Labor Board shall be filled in the same manner as the original appointment. There is no specific provision for modification of the regulations prescribed by the Commission, but the authority to prescribe regulations is believed in the absence of provision to the contrary to also confer authority to modify them if and as occasion or necessity for such modification should arise."

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The supplemental regulations governing the making and offering of nominations for appointment of members of the Railroad Labor Board adopted March 23, 1920, follows:

"Under date of March 8, 1920, the Commission prescribed a grouping of organizations of employees for the purpose of making and offering nominations for original appointment as members of the labor group on the Railroad Labor Board provided for by section 304 of the Transportation Act 1920.

"By reason of the fact that section 305 of that act contemplated the making of nominations and offering of nominees in accordance with the regulations of the Commission, within 30 days after the passage of the act, the Commission prescribed the aforesaid regulations with a view to the most expeditious making and offering to the President of nominations representative of the great bulk of those to be represented by the labor group. We are of opinion that the intent and purpose of the Transportation Act, 1920, is that the three members of the Labor Board representing the labor group shall be primarily representative of the rank and file of the employees. We were and are of the opinion that the overwhelming majority of those to be represented by the labor group are members of or represented through the organizations of employees named and grouped in our regulations of March 8, 1920.

"Since the issuance of the regulations aforesaid, representation as to their right to nominate members of the labor group has been made to the Commission by certain organizations whose members are not in certain cases, members of the organizations named in those regulations. These representations include certain employees of sleeping car companies.

"Paragraph (1) of section 304 of the Transportation Act, 1920, reads as follows:

Section 304. There is hereby established a board to be known as the "Railroad Labor Board" and to be composed of nine members as follows:

(1) Three members constituting the labor group, representing the employees and subordinate officials of the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by such employees in such manner as the Commission shall by regulation prescribe;

"It is to be observed that the three members constituting the labor group are to represent 'the employees and subordinate officials of the carriers' and that, from not less than six nominees these nominations are to be made and offered by 'such employees in such manner as the Commission shall by regulations prescribe.'

"According to the literal wording of the above paragraph, the three members constituting the labor group are to represent both the employees and subordinate officials, but the nominations are to be made and offered by 'such employees.' It is urged that the expression 'such employees' entitled to make and offer nominations is to be interpreted as including both employees and subordinate officials. As the three members constituting the labor group are to represent both employees and subordinate officials, it seems not unreasonable to conclude that the expression 'such employees' entitles both employees and subordinate officials to make and offer nominations. Inasmuch as the organizations named in our original regulations include or may include a small percentage of subordinate officials, it would appear that subordinate officials not so included as well as employees who may not be members of or represented through the organizations originally named by us, are entitled under appropriations prescribed by us, to make and offer nominations for members of the labor group.

"In coming to this conclusion it is appropriate to reaffirm our conviction that the great mass of the railroad employees and subordinate officials are members of or represented through the organizations named in our original regulations.

"It is also true that a percentage of the organizations and employees who now contend for their separate right of making and offering nominations for members of the labor group is included in the membership of the organizations named in our original regulations.

"In view of the above considerations we have determined to supplement the regulations originally put forth by adding a fourth group for the purpose of making and offering nominations for original appointment as member of the labor group on the Labor Board. Included in this group 4 are the following organizations which comprise all organizations from which we have received averments that their separate right to make nominations ought to be accorded under the Transportation Act, 1920, except the Railway Traveling Auditors' Association of America and the Supervisory Station Agents' Association, the membership of which we have held are not included in the term 'subordinate official:'

Railway Men's International Benevolent Industrial Association.
American Federation of Railroad Workers.
Order of Railroad Station Agents.
American Train Dispatcher's Association.
The Roadmasters' and Supervisors' Association of America.
National Order of Railroad Claim Men.
Railroad Yardmasters of America.
International Association of Railroad Supervisors of Mechanics.
International Association of Railroad Storekeepers.
Colored Association of Railway Employees.
Brotherhood of Railroad Station Employees.
Order of Railroad Telegraphers, Dispatchers, Agents and Signalmen.
Brotherhood of Railway Clerks.
American Association of Engineers.
Grand United Order of Locomotive Firemen of America.
Porters' Union.
Skilled and Unskilled Laborers (Railway).
Order of Railway Expressmen.

"The accredited representatives of the above organizations, duly authorized so to act, shall agree among themselves upon nominees representative of such organization, or of nominees jointly representative of a number of such organizations, provided they agree among themselves upon nominees jointly representative of any of the organizations above named.

"The nominations agreed upon by each of the above-named organizations, or agreed upon as jointly representative of any of the above named organizations, shall be transmitted direct to the President, accompanied by a certificate that the nominations have been made in accordance with these regulations: and should also include statements submitted by the duly authorized representatives of each of the organizations, or of such organizations voluntarily associated for the purpose of making joint nominations, setting forth their present total membership, exclusive of officials not embraced within the class of subordinate officials as defined by the Commission's regulations of this date, distinguishing between subordinate of-

ficials and higher officials; the percentage of the membership of such organizations, exclusive of such higher officials, who are or may be members of the organizations named in our regulations of March 8, 1920; and the distrubition of such membership as between employees and subordinate officials."

## THE ADAMSON EIGHT HOUR LAW.

The Act of September 3, 5, 1916. Complied Statutes 1916. sections 8680a to 8680d reads:

Sec. 1. Beginning January first, nineteen hundred and seventeen, eight hours shall, in contracts for labor and service, be deemed a day's work and the measure and standard of a day's work for the purpose of reckoning the compensation for services of all employees who are now or may hereafter be employed by any common carrier by railroad, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, which is subject to the provisions of the Act of February fourth, eighteen hundred and eighty-seven, entitled "An Act to regulate commerce," as amended, and who are now or may hereafter be actually engaged in any capacity in the operation of trains used for the transportation of persons or property on railroads, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, from any State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia. or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States: Provided, That the above exceptions shall not apply to railroads though less than one hundred miles in length whose principal business is leasing or furnishing terminal or transfer facilities to other railroads, or are themseives engaged in transfers of freight between railroads or between railroads and industrial plants.

This section and the three sections next following were an act entitled "An act to establish an eight-hour day for employees of carriers engaged in interstate and foreign commerce, and for other purposes," cited above.

Sec. 2. The President shall appoint a commission of three, which shall observe the operation and effects of the institution of the eight-hour standard workday as above defined and the facts and conditions affecting the relations between such common carriers and employees during a period of not less than six months nor more than nine months, in the discretion of the commission, and within thirty days thereafter such commission shall report its findings to the President and Congress; that each member of the commission created under the provisions of this Act shall receive such compensation as may be fixed by the President. That the sum of $25,000, or so much thereof as may be necessary, be, and hereby is, appropriated, out of any money in the United States Treasury not otherwise appropriated, for the necessary and proper expenses incurred in connection with the work of such commission, including salaries, *per diem*, traveling expenses of members and employees, and rent, furniture, offices fixtures and supplies, books, salaries, and other necessary expenses, the same to be approved by the chairman of said commission and audited by the proper accounting officers of the Treasury.

Sec. 3. Pending the report of the commission herein provided for and for a period of thirty days thereafter the compensation of railway employees subject to this Act for a standard eight-hour workday shall not be reduced below the present standard day's wage, and for all necessary time in excess of eight hours such employees shall be paid at a rate not less than the *pro rata* rate for such standard eight hour workday.

Sec. 4. Any persons violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than $100 and not more than $1,000, or imprisoned not to exceed one year or both.

## APPENDIX A.

[Public—No. 203—63d Congress.]

AN ACT to create a Federal Trade Commission, to define its power and duties, and for other purposes.

..*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That a Commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the Commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the Commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, and six, and seven years, respectively, from the date of the taking effect of this act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The Commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment . Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the Commission shall not impair the right of the remaining commissioners to exercise all the powers of the Commission.

The Commission shall have an official seal, which shall be judicially noticed.

Sec. 2. That each commissioner shall receive a salary of $10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive a salary of $5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the Commission may from time to time find necessary for the conduct of its work, all employees of the Commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the Commission and by the Civil Service Commission.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

Until otherwise provided by law, the Commission may rent suitable offices for its use.

The Auditor for the state and other Departments shall receive and examine all accounts of expenditures of the Commission.

Sec. 3. That upon the organization of the Commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the Commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the Commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the Commission in the exercise of the powers, authority, and duties conferred on it by this act.

The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such examiners as it may designate, prosecute any

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The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such examiners as it may designate, prosecute any

inquiry necessary to its duties in any part of the United States.

Sec. 4. That the words defined in this section shall have the following meaning when found in this act, to wit:

"Commerce" means commerce among the several states or with foreign nations, or in any territory of the United States or in the District of Columbia, or between any such territory and another, or between any such territory and any state or foreign nation, or between the District of Columbia and any state or territory or foreign nation.

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this act.

"Acts to regulate commerce" means the act entitled "An act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all acts amendatory thereof and supplementary thereto.

"Anti-trust acts" means the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an act entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the act entitled "An act to amend sections seventy-three and seventy-six of the act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen.

Sec. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the Commission while the same is in effect, the Commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its orders, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission.

Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission. The findings of the Commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, of any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon *certiorari* as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the Commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission as in the case of an application by the Commission for the enforcement of its order, and the findings of the Commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the Commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the Commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the Anti-Trust Acts.

Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (*a*) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (*b*) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (*c*) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 6. That the Commission shall also have power—

(*a*) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(*b*) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practice, management, and relation to other corporations, partnerships,

and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

(*c*) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the Anti-Trust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carrier out, and upon the application of the Attorney-General it shall be its duty to make such investigation. It shall transmit to the Attorney-General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the Commission.

(*d*) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the Anti-Trust Acts by any corporation.

(*e*) Upon the application of the Attorney-General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the Anti-Trust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(*f*) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(*g*) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this act.

(*h*) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and

to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. That in any suit in equity brought by or under the direction of the Attorney-General as provided in the Anti-Trust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the Commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The Commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

Sec. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the Commission, upon its request, all the records, papers, and information in their possession relating to any corporation subject to any of the provisions of this act, and shall detail from time to time such officials and employees to the Commission as he may direct.

Sec. 9. That for the purposes of this act the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the Commission shall have power to require by subpœna the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the Commission may sign subpœnas, and members and examiners of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the Commission may invoke the aid of any court of the United States in requiring the attendance and

testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney-General of the United States, at the request of the Commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this act or any order of the Commission made in pursuance thereof.

The Commission may order testimony to be taken by deposition in any proceeding or investigation pending under this act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and despose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the Commission or in obedience to the subpœna of the Commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty of forfeiture. But no natural person shall

be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the Commission in obedience to a subpœna issued by it: *Provided,* That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpœna or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this act, or who shall wilfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memorandum of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the Commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this act to file any annual or special report shall fail so to do within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every

day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Sec. 11. Nothing contained in this act shall be construed to prevent or interfere with the enforcement of the provisions of the Anti-Trust Acts or the act to regulate commerce, nor shall anything contained in the act be construed to alter, modify, or repeal the said Anti-Trust acts or the acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

## THE BUREAU OF CORPORATIONS.

## AN ACT TO ESTABLISH THE DEPARTMENT OF COMMERCE AND LABOR.

Approved February 14, 1903.

* * * * * * * * *

Sec. 6. That there shall be in the Department of Commerce and Labor a bureau to be called the Bureau of Corporations, and a Commissioner of Corporations who shall be the head of said bureau, to be appointed by the President, who shall receive a salary of five thousand dollars per annum. There shall also be in said bureau a Deputy Commissioner, who shall receive a a salary of Three thousand five hundred dollars per annum and who shall, in the absence of the commissioner, act as and perform the duties of the Commissioner of Corporation. and who shall also perform such other duties as may be assigned to him by the Secretary of Commerce and Labor or by the said

commissioner. There shall also be in the said bureau a chief clerk and such special agents, clerks, and other employees as may be authorized by law.

The said commissioner shall have power and authority to make, under the direction and control of the Secretary of Commerce and Labor, diligent investigation into the organization, conduct and management of the business of any corporation, joint-stock company, or corporate combination engaged in commerce among the several states and with foreign nations, excepting common carriers subject to "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce, and to report such data to the President from time to time as he shall require; and the information so obtained, or so much thereof as the President may direct, shall be made public.

In order to accomplish the purposes declared in the foregoing part of this section, the said commissioner shall have and exercise the same power and authority in respect to corporation, joint-stock companies and combinations subject to the provisions hereof as is conferred on the Interstate Commerce Commission in said "act to regulate commerce" and the amendments thereto in respect to common carriers, so far as the same may be applicable, including the right to subpœna and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths. All the requirements, obligations, liabilities and immunities imposed or conferred by said "act to regulate commerce" and by "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, supplemental to said "act to regulate commerce," shall also apply to all persons who may be subpœnaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by this section.

It shall also be the duty and province of said bureau, under the direction of the Secretary of Commerce and Labor, to gather, compile, publish and supply useful information concerning corporations doing business within the limits of the United States as shall engage in interstate commerce or in commerce

between the United States and any foreign country, including corporations engaged in insurance, and to attend to such other duties as may be hereafter provided by law.

## ANTI-DUMPING LAW.

An Act to Increase the Revenue, and for Other Purposes, Approved September 8th, 1916, contains sections called the Anti-Dumping Provisions, which read:

Sec. 800 (of the general revenue Act referred to above). That when used in this title the term "person" includes partnerships, corporations and associations.

Sec. 801. That it shall be unlawful for any person importing or assisting in importing any article from any foreign country into the United States, commonly and systematically to import, sell, or cause to be imported or sold such articles within the United States at a price substantially less than the actual market value or wholesale price of such articles, at the time of exportation to the United States, in the principal markets of the country of their production, or of other foreign countries to which they are commonly exported, after adding to such market value or wholesale price, freight, duty, and other charges and expenses necessarily incident to the importation and sale thereof in the United States. Provided, That such act or acts be done with the intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade and commerce in such articles in the United States.

Any person who violates or combines or conspires with any other person to violate this section is guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine not exceeding $5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, this section, may sue therefor in the district court of the United States for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee:

The foregoing provision shall not be construed to deprive

the proper State courts of jurisdiction in actions for damages thereunder.

Sec. 802. That if any article produced in a foreign country is imported into the United States under any agreement, understanding, or condition that the importer thereof or any other persons in the United States shall not use, purchase, or deal in, or shall be restricted in his using, purchasing, or dealing in, the articles of any other person, there shall be levied, collected and paid thereon, in addition to the duty otherwise imposed by law, a special duty equal to double the amount of such duty: Provided, That the above shall not be interpreted to prevent the establishing in this country on the part of a foreign producer of an exclusive agency for the sale in the United States of the products of said foreign producer or merchant, nor to prevent such exclusive agent from agreeing not to use, purchase, or deal in the article of any other person, but this proviso shall not be construed to exempt from the provisions of this section any article imported by such exclusive agent if such agent is required by the foreign producer or if it is agreed between such agent and such foreign producer, that any agreement, understanding, or condition set out in this section shall be imposed by such agent upon the sale or other disposition of such article to any person in the United States.

Sec. 803. That the Secretary of the Treasury shall make such rules and regulations as are necessary for the carrying out of the provisions of section eight hundred and two.

## FEDERAL TRADE COMMISSION RULES OF PRACTICE.

### I. SESSIONS.

The principal office of the Commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. The Commission may meet and exercise all its powers at any other place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.

Sessions of the Commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the Commission at Washington, D. C., on each business day at 10 a. m. Three members

of the Commission shall constitute a quorum for the transaction of business.

All orders of the Commission shall be signed by the Secretary.

## II. COMPLAINTS.

Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

The Commission shall investigate the matters complained of in such application, and if upon investigation the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, the Commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed, at least 40 days after the service of said complaint.

## III. ANSWERS.

Within 30 days from the service of the complaint, unless such time be extended by order of the Commission, the defendant shall file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. It shall specifically admit or deny or explain each of the facts alleged in the complaint, unless the defendant is without knowledge, in which case he shall so state, such statement operating as a denial. Answers in typewriting must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margin not less than 1 inch wide.

## IV. SERVICE.

Complaints, orders, and other processes of the Commission

may be served by anyone duly authorized by the Commission, either (*a*) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director, of the corporation or association to be served; or (*b*) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (*c*) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

## V. INTERVENTION.

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Applications to intervene must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

## VI. CONTINUANCES AND EXTENSIONS OF TIME.

Continuances and extensions of time will be granted at the discretion of the Commission.

## VII. WITNESSES AND SUBPOENAS.

Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by desposition.

Subpœnas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the Commission.

Subpœnas for the production of documentary evidence (unless directed to issue by a Commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

## VIII. TIME FOR TAKING TESTIMONY.

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than five nor more than ten days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a Commissioner, or an Examiner.

## IX. OBJECTIONS TO EVIDENCE.

Objections to the evidence before the Commission, a Commissioner, or an Examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

## X. MOTIONS.

A motion in a preceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceedings, shall be filed with such motion and plainly referred to therein.

XI. HEARINGS ON INVESTIGATIONS.

When a matter for investigation is referred to a single Commissioner for examination or report, such Commissioner may conduct or hold conferences or hearings thereon, either alone or with other Commissioners who may sit with him, and reasonable notice of the time and place of such hearing shall be given to parties in interest and posted.

The General Counsel or one of his assistants, or such other attorney as shall be designated by the Commission, shall attend and conduct such hearings, and such hearings, may, in the discretion of the Commissioner holding same, be public.

XII. DEPOSITIONS IN CONTESTED PROCEEDINGS.

The Commission may order testimony to be taken by deposition in a contested proceeding.

Depositions may be taken before any person designated by the Commission and having power to administer oaths.

Any party desiring to take the desposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.

The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the Commission at its office in Washington, D. C. Upon receipt of the deposition and copy the Commission shall file in the record

in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney.

Such deposition shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide.

No deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.

No deposition shall be taken either before the proceeding is at issue, or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the Commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing

## XIII. DOUCUMENTARY EVIDENCE.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed.

## XIV. BRIEFS.

Unless otherwise ordered, briefs may be filed at the close of the testimony in each contested proceeding. The presiding Commissioner or examiner shall fix the time within which briefs shall be filed and service thereof shall be made upon the adverse parties.

All briefs must be filed with the Secretary and be accompanied by proof of service upon the adverse parties. Fifteen copies of each brief shall be furnished for the use of the Commission, unless otherwise ordered.

Application for extension of time in which to file any brief shall be by petition in writing, stating the facts upon which the application rests, which must be filed with the Commission at least 5 days before the time for filing the brief.

Every brief shall contain, in the order here stated—

(1) A concise abstract, or statement of the case.

(2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point.

Every brief of more than 10 pages shall contain on its top fly leaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 inches by 10½ inches, with inside margins not less than 1 inch wide, and with double-leaded text and single-leaded citations.

Oral arguments will be had only as ordered by the Commission.

## XV. ADDRESS OF THE COMMISSION.

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specifically directed.

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# APPENDIX B.

## SAFETY APPLIANCE ACTS.

**An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

Sec. 2. That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

Sec. 3. That when any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section one of this act, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with the first section of this act, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this act.

Sec. 4. That from and after the first day of July, eighteen hundred and ninety-five, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not pro-

vided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

Sec. 5. That within ninety days from the passage of this act the American Railway Association is authorized hereby to designate to the Interstate Commerce Commission the standard height of drawbars for freight cars, measured perpendicular from the level of the tops of the rails to the centers of the drawbars, for each of the several gauges of railroads in use in the United States, and shall fix a maximum variation from such standard height to be allowed between the drawbars of empty and loaded cars. Upon their determination being certified to the Interstate Commerce Commission, said Commission shall at once give notice of the standard fixed upon to all common carriers, owners, or lessees engaged in interstate commerce in the United States by such means as the Commission may deem proper. But should said association fail to determine a standard as above provided, it shall be the duty of the Interstate Commerce Commission to do so, before July first, eighteen hundred and ninety-four, and immediately to give notice thereof as aforesaid. And after July first, eighteen hundred and ninety-five, no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard above provided for.

Sec. 6. (*As amended April 1, 1896.*) That any such common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge: *Provided*, That nothing in this act contained shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such car from top of rail to center of coupling

does not exceed twenty-five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs.

Sec. 7. That the Interstate Commerce Commission may from time to time upon full hearing and for good cause extend the period within which any common carrier shall comply with the provisions of this act.

Sec. 8. That any employee of any such common carrier who may be injured by any locomotive, car, or train in use contrary to the provisions of this act shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge.

Public, No. 113, approved March 2, 1893, amended April 1, 1896.

NOTE.—Prescribed standard height of drawbars: Standard-gauge roads, 34½ inches; narrow-gauge roads, 26 inches; maximum variation between loaded and empty cars, 3 inches.

# APPENDIX C.

**An Act to amend an act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, and their locomotives with driving-wheel brakes, and for other purposes," approved March second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions and requirements of the act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, and their locomotives with driving-wheel brakes, and for other purposes," approved March second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six, shall be held to apply to common carriers by railroads in the territories and the District of Columbia and shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type; and the provisions and requirements hereof and of said acts relating to train brakes, automatic couplers, grab irons, and the height of drawbars shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith, excepting those trains, cars, and locomotives exempted by the provisions of section six of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, or which are used upon street railways.

Sec. 2. That whenever, as provided in said act, any train is operated with power or train brakes, not less than fifty per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-braked cars in such train which are associated together with said fifty per centum shall have their brakes so used

and operated; and, to more fully carry into effect the objects of said act, the Interstate Commerce Commission may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid; and failure to comply with any such requirement of the said Interstate Commerce Commission shall be subject to the like penalty as failure to comply with any requirement of this section.

Sec. 3. Tthat the provisions of this act shall not take effect until September first, nineteen hundred and three. Nothing in this act shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States district attorney from any of the provisions, powers, duties, liabilities, or requirements of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six; and all of the provisions, powers, duties, requirements, and liabilities of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, shall, except as specifically amended by this act, apply to this act.

Public, No. 133, approved March 2, 1903.

# APPENDIX D.

**AN ACT To supplement "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving wheel brakes and for other purposes," and other safety appliance Acts, and for other purposes.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of this act shall apply to every common carrier and every vehicle subject to the act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three, commonly known as the "Safety Appliance Acts."

Sec. 2. That on and after July first, nineteen hundred and eleven, it shall be unlawful for any common carrier subject to the provisions of this act to haul, or permit to be hauled or used on its line any car subject to the provisions of this act not equipped with appliances provided for in this act, to wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure hand holds or grab irons on their roofs at the tops of such ladders: *Provided,* That in the loading and hauling of long commodities requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus combined for such purpose.

Sec. 3. That within six months from the passage of this act the Interstate Commerce Commission, after hearing, shall designate the number, dimensions, location, and manner of application of the appliances provided for by section two of this act and section four of the act of March second, eighteen hundred and ninety-three, and shall give notice of such designation to all common carriers subject to the provisions of this act by such means as the Commission may deem proper, and thereafter said number, location, dimensions, and manner of application as designated by said Commission shall remain as the standards of equip-

ment to be used on all cars subject to the provisions of this act, unless changed by an order of said Interstate Commerce Commission, to be made after full hearing and for good cause shown; and failure to comply with any such requirement of the Interstate Commerce Commission shall be subject to a like penalty as failure to comply with any requirement of this act: *Provided,* That the Interstate Commerce Commission may, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this section with respect to the equipment of cars actually in service upon the date of the passage of this act. Said Commission is hereby given authority, after hearing, to modify or change, and to prescribe the standard height of drawbars and to fix the time within which such modification or change shall become effective and obligatory, and prior to the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard now fixed or the standard so prescribed, and after the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard so prescribed by the Commission.

SEC. 4. That any common carrier subject to this act using, hauling, or permitting to be used or hauled on its line any car subject to the requirements of this act not equipped as provided in this act shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered as provided in section six of the act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six: *Provided,* That where any car shall have been properly equipped, as provided in this act and the other acts mentioned herein, and such equipment shall have become defective or insecure while such car was being used by such carrier upon its line of railroad, such car may be hauled from the place where such equipment was first discovered to be defective or insecure to the nearest available point where such car can be repaired, without liability for the penalties imposed by section four of this act or section six of the act of March second, eighteen hundred and ninety-three, as amended by the act of April first. eighteen hundred and ninety-six, if such movement is necessary to make such repairs and such repairs can not be made except at such repair point; and such movement or hauling of such car shall be at

the sole risk of the carrier, and nothing in this section shall be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employee caused to such employee by reason of or in connection with the movement or hauling of such car with equipment which is defective or insecure or which is not maintained in accordance with the requirements of this act and the other acts herein referred to; and nothing in this proviso shall be construed to permit the hauling of defective cars by means of chains instead of drawbars, in revenue trains or in association with other cars that are commercially used, unless such defective cars contain live stock or "perishable" freight.

Sec. 5. That except that, within the limits specified in the preceding section of this act, the movement of a car with defective or insecure equipment may be made without incurring the penalty provided by the statutes, but shall in all other respects be unlawful, nothing in this act shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States attorney from any of the provisions, powers, duties, liabilities, or requirements of said act of March second, eighteen hundred and ninety-three, as amended by the acts of April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three; and, except as aforesaid, all of the provisions, powers, duties, requirements, and liabilities of said act of March second, eighteen hundred and ninety-three, as amended by the acts of April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three, shall apply to this act.

Sec. 6. That it shall be the duty of the Interstate Commerce Commission to enforce the provisions of this act, and all powers heretofore granted to said Commission are hereby extended to it for the purpose of the enforcement of this act.

That the jurisdiction of the Interstate Commerce Commission to extend the period within which any common carrier shall comply with the provisions of section three of the act entitled "An act to supplement 'An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes,' and other safety-ap-

pliance acts, and for other purposes," approved April fourteenth, nineteen hundred and ten, shall apply to cars actually placed in service between the date of the passage of said act and the first day of July, nineteen hundred and eleven, in the same manner and to the same extent that it applies to cars actually in service upon the date of the passage of said act. [36 Stat. L., 1397.]

Public, No. 133, approved April 14, 1910; Public, No. 525, approved March 4, 1911.

Sundry civil act (appropriations) of June 28, 1902, authorizes Commission to employ "inspectors to execute and enforce the requirements of the safety-appliance act."

# APPENDIX E.

## ACCIDENT REPORTS ACT.

**AN ACT requiring common carriers engaged in interstate and foreign commerce to make full reports of all accidents to the Interstate Commerce Commission, and authorizing investigations thereof by said Commission.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall be the duty of the general manager, superintendent, or other proper officer of every common carrier engaged in interstate or foreign commerce by railroad to make to the Interstate Commerce Commission, at its office in Washington, District of Columbia, a monthly report, under oath, of all collisions, derailments, or other accidents resulting in injury to persons, equipment, or roadbed arising from the operation of such railroad under such rules and regulations as may be prescribed by the said Commission, which report shall state the nature and causes thereof and the circumstances connected therewith: *Provided,* That hereafter all said carriers shall be relieved from the duty of reporting accidents in their annual financial and operating reports made to the Commission.

Sec. 2. That any common carrier failing to make such report within thirty days after the end of any month shall be deemed guilty of a misdemeanor, and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than one hundred dollars for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same.

Sec. 3. That the Interstate Commerce Commission shall have authority to investigate all collisions, derailments, or other accidents resulting in serious injury to person or to the property of a railroad occurring on the line of any common carrier engaged in interstate or foreign commerce by railroad. The Commission, or any impartial investigator thereunto authorized by said Commission, shall have authority to investigate such collisions, derailments, or other accidents aforesaid, and all the attending facts, conditions, and circumstances, and for that pur-

pose may subpœna witnesses, administer oaths, take testimony, and require the production of books, papers, orders, memoranda, exhibits, and other evidence, and shall be provided by said carriers with all reasonable facilities: *Provided,* That when such accident is investigated by a Commission of the state in which it occurred, the Interstate Commerce Commission shall, if convenient, make any investigation it may have previously determined upon, at the same time as, and in connection with, the state Commission investigation. Said Commission shall, when it deems it to the public interest, make reports of such investigations, stating the cause of accident, together with such recommendations as it deems proper. Such reports shall be made public in such manner as the Commission deems proper.

Sec. 4. That neither said report nor any report of said investigation nor any part thereof shall be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report or investigation.

Sec. 5. That the Interstate Commerce Commission is authorized to prescribe for such common carriers a method and form for making the reports hereinbefore provided.

Sec. 6. That the act entitled "An act requiring common carriers engaged in interstate commerce to make full reports of all accidents to the Interstate Commerce Commission," approved March third, nineteen hundred and one, is hereby repealed.

Sec. 7. That the term "interstate commerce," as used in this act, shall include transportation from any state or territory or the District of Columbia to any other state or territory or the District of Columbia, and the term "foreign commerce," as used in this act, shall include transportation from any state or territory or the District of Columbia to any foreign country and from any foreign country to any state or territory or the District of Columbia.

Sec. 8. That this act shall take effect sixty days after its passage.

Public, No. 165, approved May 6, 1910.

# APPENDIX F

## MEDALS OF HONOR ACT.

**AN ACT to promote the security of travel upon railroads engaged in interstate commerce, and to encourage the saving of life.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States be, and he is hereby, authorized to cause to be prepared bronze medals of honor, with suitable emblematic devices, which shall be bestowed upon any persons who shall hereafter, by extreme daring, endanger their own lives in saving, or endeavoring to save, lives from any wreck, disaster, or grave accident, or in preventing or endeavoring to prevent such wreck, disaster, or grave accident, upon any railroad within the United States engaged in intrstate commerce: *Provided*, That no award of said medal shall be made to any person until sufficient evidence of his deserving shall have been furnished and placed on file, under such regulations as may be prescribed by the President of the United States.

Sec. 2. That the President of the United States be, and he is hereby, authorized to issue to any person to whom a medal of honor may be awarded under the provisions of this act a rosette or knot, to be worn in lieu of the medal, and a ribbon to be worn with the medal; said rosette or knot and ribbon to be each of a pattern to be prescribed by the President of the United States: *Provided*, That whenever a ribbon issued under the provisions of this act shall have been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued, a new ribbon shall be issued to such person without charge therefor.

Sec. 3. That the appropriations for the enforcement and execution of the provisions of the acts to promote the safety of employees and travelers upon railroads are hereby made available for carrying out the provisions of this act.

**REGULATIONS Governing the award of life-saving medals under the foregoing Act. Made by the Presidents of the United States on March 29, 1905.**

1. Applications for medals under this act should be addressed to and filed with the Interstate Commerce Commission, at the city of Washington, D. C. Satisfactory evidence of the facts upon which the application is based must be filed in each case. This evidence should be in the form of affidavits made by eye-witnesses, of good repute and standing, testifying of their own knowledge. The opinion of witnesses that the person for whom an award is sought acted with extreme daring and endangered his life is not sufficient, but the affidavits must set forth the facts in detail and show clearly in what manner and to what extent life was endangered and extreme daring exhibited. The railroad upon which the incident occurred, the date, time of day, condition of the weather, the names of all persons present when practicable, and other pertinent circumstances should be stated. The affidavit should be made before an officer duly authorized to administer oaths and be acompanied by the certificate of some United States official of the district in which the affiants reside, such as a judge or clerk of United States court, district attorney, or postmaster, to the effect that the affiants are reputable and creditable persons. If the affidavits are taken before an officer without an official seal his official character must be certified by the proper officer of a court of record under the seal thereof.

2. Applications for medals, together with all affidavits and other evidence received in connection therewith, shall be referred to a committee of five persons, consisting of the secretary of the Commission, the chief inspector of safety appliances, two inspectors of safety appliances designated by the Commission, and the clerk of the safety-appliance examining board, who shall act as clerk of the committee. This committee shall carefully consider each application presented and, after thoroughly weighing the evidence, shall prepare an abstract or brief covering the case and file the same, together with the committee's recommendation, with the Commission, which brief and recommendation shall be transmitted by the Commission to the President for his approval. The committee may, with the approval of the Commission, direct any inspector of safety appliances in the employ of the Commission to proceed to the locality where the service was performed for which a medal is claimed, and make a personal investigation and report upon the facts of the case, which

report shall be filed and made a part of the evidence considered by the committee.

3. Upon final approval of the committee's recommendation by the President the Commission shall take such measures to carry the recommendation into effect as the President may direct.

4. The Commission shall cause designs to be prepared for the medal, rosette, and ribbon provided for by the act, which designs shall be submitted to the President for his approval.

# APPENDIX G.

## HOURS OF SERVICE ACT.

*An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of this act shall apply to any common carrier or carriers, their officers, agents, and employees, engaged in the transportation of passengers or property by railroad in the District of Columbia or any territory of the United States, or from one state or territory of the United States or the District of Columbia to any other state or territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States. The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "employees" as used in this act shall be held to mean persons actually engaged in or connected with the movement of any train.

Sec. 2. That it shall be unlawful for any common carrier, its officers or agents, subject to this act to require or permit any employee subject to this act to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty: *Provided,* That no operator train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or

affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week: *Provided further,* The Interstate Commerce Commission may after full hearing in a particular case and for good cause shown extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

Sec. 3. That any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation of the second section hereof, shall be liable to a penalty of not to exceed five hundred dollars for each and every violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon satisfactory information being lodged with him; but no such suit shall be brought after the expiration of one year from the date of such violation; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge. In all prosecutions under this act the common carrier shall be deemed to have had knowledge of all acts of all its officers and agents: *Provided,* That the provisions of this act shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen: *Provided further,* That the provisions of this act shall not apply to the crews of wrecking or relief trains.

Sec. 4. It shall be the duty of the Interstate Commerce Commission to execute and enforce the provisions of this act, and all

powers granted to the Interstate Commerce Commission are hereby extended to it in the execution of this act.

Sec. 5. That this act shall take effect and to be in force one year after its passage.

Public, No. 274, approved March 4, 1907, 11.50 a. m.

# APPENDIX H.

## ASH-PAN ACT.

AN ACT to promote the safety of employees on railroads.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That on and after the first day of January, nineteen hundred and ten, it shall be unlawful for any common carrier engaged in interstate or foreign commerce by railroad to use any locomotive in moving interstate or foreign traffic, not equipped with an ash pan, which can be dumped or emptied and cleaned without the necessity of any employee going under such locomotive.

Sec. 2. That on and after the first day of January, nineteen hundred and ten, it shall be unlawful for any common carrier by railroad in any territory of the United States or the District of Columbia to use any locomotive not equipped with an ash pan, which can be dumped or emptied and cleaned without the necessity of any employee going under such locomotive.

Sec. 3. That any such common carrier using any locomotive in violation of any of the provisions of this act shall be liable to a penalty of two hundred dollers for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge.

Sec. That it shall be the duty of the Interstate Commerce Commission to enforce the provisions of this act, and all powers heretofore granted to said Commission are hereby extended to it for the purpose of the enforcement of this act.

Sec. 5. That the term "common carrier" as used in this Act shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

Sec. 6. That nothing in this act contained shall apply to any locomotive upon which, by reason of the use of oil, electricity, or other such agency, an ash pan is not necessary .

Public, No. 165, approved May 30, 1908.

# APPENDIX I.

## TRANSPORTATION OF EXPLOSIVES ACT.

**AN ACT to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation.**

By an act entitled "An act to codify, revise, and amend the penal laws of the United States," approved March 4, 1909, to take effect and be in force on and after the first day of January, 1910, the act entitled "An act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved May 30, 1908, is repealed, and the following sections of said Act to codify, revise, and amend the penal laws of the United States are substituted therefor:

Sec. 232. It shall be unlawful to transport, carry, or convey, any dynamite, gunpowder, or other explosives, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between a place in any state, territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, and a place in any other state, territory, or District of the United States, or place noncon tiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier, which vessel or vehicle is carrying passengers for hire: *Provided.* That it shall be lawful to transport on any such vessel or vehicle small arms ammunition in any quantity, and such fuses, torpedoes, rockets, or other signal devices, as may be essential to promote safety in operation, and properly packed and marked samples of explosives for laboratory examination, not exceeding a net weight of one-half pound each, and not exceeding twenty samples at one time in a single vessel or vehicle; but such samples shall not be carried in that part of a vessel or vehicle which is intended for the transportation of passengers for hire: *Provided further,* That nothing in this section shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger equipment vessels or vehicles.

Sec. 233. The Interstate Commerce Commission shall formulate regulations for the safe transportaion of explosives, which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives by land. Said Commission, of its own motion, or upon application made by any interested party, may make changes or modifications in such regu lations, made desirable by new information or altered conditions. Such regulations shall be in accord with the best known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport. Such regulations, as well as all changes or modifications thereof, shall take effect ninety days after their formulation and publication by said Commission and shall be in effect until reversed, set aside, or modified.

Sec. 234. It shall be unlawful to transport, carry, or convey, liquid nitroglycerin, fulminate in bulk in dry condition, or other like explosives, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between a place in one state, territory, or District of the United States, or a place noncontiguous to but subject to the jurisdiction thereof, and a place in any other state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier in the transportation of passengers or articles of commerce by land or water.

Sec. 235. Every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall have plainly marked on the outside thereof the contents thereof; and it shall be unlawful for any person to deliver, or cause to be delivered, to any common carrier engaged in interstate or foreign commerce by land or water, for interstate or foreign transportation, or to carry upon any vessel or vehicle engaged in interstate or foreign transportation, any explosives, or other dangerous articles, under any false or deceptive marking, description, invoice, shipping order, or other declaration, or without informing the agent of such carrier of the true character thereof, at or before the time such delivery or carriage is made. Whoever shall knowingly violate, or cause to be violated, any provision of this section, or of the three sections last preceding,

or any regulation made by the Interstate Commerce Commission in pursuance thereof, shall be fined not more than two thousand dollars, or imprisoned not more than eighteen months, or both.

Sec. 236. When the death or bodily injury of any person is caused by the explosion of any article named in the four sections last preceding, while the same is being placed upon any vessel or vehicle to be transported in violation thereof, or while the same is being so transported, or while the same is being removed from such vessel or vehicle, the person knowingly placing, or aiding or permitting the placing, of such articles upon any such vessel or vehicle, to be so transported, shall be imprisoned not more than ten years.

Public, No. 350, approved March 4, 1909.

# APPENDIX J.

## BOILER INSPECTION ACT.

AN ACT to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto.

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,* That the provisions of this act shall apply to any common carrier or carriers, their officers, agents, and employees, engaged in the transportation of passengers or property by railroad in the District of Columbia, or in any territory of the United States, or from one state or territory of the United States or the District of Columbia to any other state or territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States. The term "railroad" as used in this act shall include all the roads in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and the term "employees" as used in this act shall be held to mean persons actually engaged in or connected with the movement of any train.

Sec. 2. That from and after the first day of July, nineteen hundred and eleven, it shall be unlawful for any common carrier, its officers or agents, subject to this act to use any locomotive engine propelled by steam power in moving interstate or foreign traffic unless the boiler of said locomotive and appurtenances thereof are in proper condition and safe to operate in the service to which the same is put, that the same may be employed in the active service of such carrier in moving traffic without unnecessary peril to life or limb, and all boilers shall be inspected from time to time in accordance with the provisions of this act, and be able to withstand such test or tests as may be prescribed in the rules and regulations hereinafter provided for.

Sec. 3. That there shall be appointed by the President. by and with the advice and consent of the Senate. a chief inspector and two assistant chief inspectors of locomotive boilers, who shall

have general superintendence of the inspectors hereinafter provided for, direct them in the duties hereby imposed upon them, and see that the requirements of this act and the rules, regulations, and instructions made or given hereunder are observed by common carriers subject hereto. The said chief inspector and his two assistants shall be selected with reference to their practical knowledge of the construction and repairing of boilers, and to their fitness and ability to systematize and carry into effect the provisions hereof relating to the inspection and maintenance of locomotive boilers. The chief inspector shall receive a salary of four thousand dollars per year and the assistant chief inspectors shall each receive a salary of three thousand dollars per year; and each of the three shall be paid his traveling expenses incurred in the performance of his duties. The office of the chief inspector shall be in Washington, District of Columbia, and the Interstate Commerce Commission shall provide such stenographic and clerical help as the business of the offices of the chief inspector and his said assistants may require.

Sec. 4. That immediately after his appointment and qualification the chief inspector shall divide the territory comprising the several states, the territories of New Mexico and Arizona, and the District of Columbia into fifty locomotive boiler-inspection districts, so arranged that the service of the inspector appointed for each district shall be most effective, and so that the work required of each inspector shall be substantially the same. Thereupon there shall be appointed by the Interstate Commerce Commission fifty inspectors of locomotives boilers. Said inspectors shall be in the classified service and shall be appointed after competitive examination according to the law and the rules of the Civil Service Commission governing the classified service. The chief inspector shall assign one inspector so appointed to each of the districts hereinbefore named. Each inspector shall receive a salary of one thousand eight hundred dollars per year and his traveling expenses while engaged in the performance of his duty. He shall receive in addition thereto an annual allowance for office rent, stationery, and clerical assistance, to be fixed by the Interstate Commerce Commission, but not to exceed in the case of any district inspector six hundred dollars per year. In order to obtain the most competent inspectors possible, it shall be the duty of the chief inspector to prepare a list of questions to be

propounded to applicants with respect to construction, repair, operation, testing, and inspection of locomotive boilers, and their practical experience in such work, which list, being approved by the Interstate Commerce Commission, shall be used by the Civil Service Commission as a part of its examination . No person interested, either directly or indirectly, in any patented article required to be used on any locomotive under supervision or who is intemperate in his habits shall be eligible to hold the office of either chief inspector or assistant or district inspector.

Sec. 5. That each carrier subject to this act shall file its rules and instructions for the inspection of locomotive boilers with the chief inspector within three months after the approval of this act, and after hearing and approval by the Interstate Commerce Commission, such rules and instructions, with such modifications as the Commission requires, shall become obligatory upon such carrier: *Provided, however,* That if any carrier subject to this act shall fail to file its rules and instructions the chief inspector shall prepare rules and instructions not inconsistent herewith for the inspection of locomotive boilers, to be observed by such carrier; which rules and instructions, being approved by the Interstate Commerce Commission, and a copy thereof being served upon the president, general manager, or general superintendent of such carrier, shall be obligatory, and a violation thereof punished as hereinafter provided: *Provided also,* That such common carrier may from time to time change the rules and regulations herein provided for, but such change shall not take effect and the new rules and regulations be in force until the same shall have been filed with and approved by the Interstate Commerce Commission. The chief inspector shall also make all needful rules, regulations, and instructions not inconsistent herewith for the conduct of his office and for the government of the district inspectors: *Provided however,* That all such rules and instructions shall be approved by the Interstate Commerce Commission before they take effect.

Sec. 6. That it shall be the duty of each inspector to become familiar, so far as practicable, with the conditions of each locomotive boiler ordinarily housed or repaired in his district, and if any locomotive is ordinarily housed or repaired in two or more districts, then the chief inspector or an assistant shall make such division between inspectors as will avoid the necessity for dupli-

cation of work. Each inspector shall make such personal inspection of the locomotive boilers under his care from time to time as may be necessary to fully carry out the provisions of this act, and as may be consistent with his other duties, but he shall not be required to make such inspections at stated times or at regular intervals. His first duty shall be to see that the carriers make inspections in accordance with the rules and regulations established or approved by the Interstate Commerce Commission, and that carriers repair the defects which such inspections disclose before the boiler or boilers or appurtenances pertaining thereto are again put in service. To this end each carrier subject to this Act shall file with the inspector in charge, under the oath of the proper officer or employee, a duplicate of the report of each inspection required by such rules and regulations, and shall also file with such inspector, under the oath of the proper officer or employee, a report showing the repair of the defects disclosed by the inspection. The rules and regulations hereinbefore provided for shall prescribe the time at which such reports shall be made. Whenever any district inspector shall, in the performance of his duty, find any locomotive boiler or apparatus pertaining thereto not conforming to the requirements of the law or the rules and regulations established and approved as hereinbefore stated, he shall notify the carrier in writing that the locomotive is not in servicable condition, and thereafter such boiler shall not be used until in serviceable condition: *Provided,* That a carrier, when notified by an inspector in writing that a locomotive boiler is not in serviceable condition because of defects set out and described in said notice, may, within five days after receiving said notice, appeal to the chief inspector by telegraph or by letter to have said boiler re-examined, and upon receipt of the appeal from the inspector's decision the chief inspector shall assign one of the assistant chief inspectors or any district inspector other than the one from whose decision the appeal is taken to re examine and inspect said boiler within fifteen days from date of notice. If upon such reexamination the boiler is found in serviceable condition, the chief inspector shall immediately notify the carrier in writing, whereupon such boiler may be put into service without further delay; but if the reexamination of said boiler sustains the decision of the district inspector, the chief inspector shall at once notify the carrier owning or operating such

locomotive that the appeal from the decision of the inspector is dismissed, and upon the receipt of such notice the carrier may, within thirty days, appeal to the Interstate Commerce Commission, and upon such appeal, and after hearing, said Commission shall have power to revise, modify, or set aside such action of the chief inspector and declare that said locomotive is in serviceable condition and authorize the same to be operated: *Provided further,* That pending either appeal the requirements of the inspector shall be effective.

Sec. 7. That the chief inspector shall make an annual report to the Interstate Commerce Commission of the work done during the year, and shall make such recommendations for the betterment of the service as he may desire.

Sec. 8. That in the case of accident resulting from failure from any cause of a locomotive boiler or its appurtenances, resulting in serious injury or death to one or more persons, a statement forthwith must be made in writing of the fact of such accident, by the carrier owning or operating said locomotive, to the chief inspector; whereupon the facts concerning such accident shall be investigated by the chief inspector or one of his assistants, or such inspector as the chief inspector may designate for that purpose. And where the locomotive is disabled to the extent that it can not be run by its own steam, the part or parts affected by said accident shall be preserved by said carrier intact, so far as possible, without hindrance or interference to traffic until after said inspection. The chief inspector or an assistant or the designated inspector making the investigation shall examine or cause to be examined thoroughly the boiler or part affected, making full and detailed report of the cause of the accident to the chief inspector.

The Interstate Commerce Commission may at any time call upon the chief inspector for a report of any accident embraced in this section, and upon the receipt of said report, if it deems it to the public interest, make reports of such investigations, stating the cause of accident, together with such recommendations as it deems proper. Such reports shall be made public in such manner as the Commission deems proper. Neither said report nor any report of said investigation nor any part thereof shall be admitted as evidence or used for any purpose in any suit or

action for damages growing out of any matter mentioned in said report or investigation.

Sec. 9. That any common carrier violating this act or any rule or regulation made under its provisions or any lawful order of any inspector shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such attorneys, subject to the direction of the Attorney-General, to bring such suits upon duly verified information being lodged with them, respectively, of such violations having occurred; and it shall be the duty of the chief inspector of locomotive boilers to give information to the proper United States attorney of all violations of this act coming to his knowledge.

Sec. 10. That the total amounts directly appropriated to carry out the provisions of this act shall not exceed for any one fiscal year the sum of three hundred thousand dollars.

Public, No. 383, approved February 17, 1911.

# APPENDIX K.

## EMPLOYER'S LIABILITY ACT.

**An ACT relating to the liability of common carriers by railroad to their employees in certain cases.**

(Act of 1908, as amended by the Act of April 5, 1910.)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That every common carrier by railroad while engaging in commerce between any of the several states or territories, or between any of the states and territories, or between the District of Columbia and any of the states or territories, or between the District of Columbia, or any of the states or territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or in case of the death of such employee, to his or her personal representative for the benefit of the surviving widow or husband and children of such employee; and if none, then of such employee's parents, and if none, then to the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiency due to its negligence, in its cars, engines, appliances, machinery, track, road-bed, works, boats, wharves, or other equipment.

Sec. 2. That every common carrier by railroad in the territories, the District of Columbia, the Panama Zone, or other possessions of the United States, shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or in case of the death of such employee, to his or her personal representatives, for the benefit of the surviving widow or husband and children of such employee; and if none, then of such employee's parents; and if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery. track, road-bed, works, boats, wharves or other equipment.

Sec. 3. That in all actions hereafter brought against any such common carrier by railroad under or by virtue of the provisions of this act to recover damages for personal injury to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided, however,* That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

Sec. 4. That in any action brought against any common carrier under or by virtue of any of the provisions of this act to recover damages for injuries to, or the death of, any of its employees, such employees shall not be held to have assumed the risk of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

Sec. 5. That any contract, rule, regulation, or device whatsoever, the purpose and intent of which shall be to enable any common carrier to exempt itself from any liability created by this act, shall to that extent be void: *Provided,* That in any action brought against any such common carrier under or by virtue of any of the provisions of this act, such common carrier may set off therein any sum it has contributed or paid to any insurance, or relief benefit, or indemnity that may have been paid to the injured employee, or the person entitled thereto, on account of the injury or death for which said action was brought.

"Sec. 6. That no action shall be maintained under this act unless commenced within two years from the day the cause of action accrued.

"Under this act an action may be brought in a circuit court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this act shall be concurrent with that of the courts of the several states, and no case arising under this act and brought in

any state court of competent jurisdiction shall be removed to any court of the United States."

Sec. 7. That the term "common carrier" as used in this act shall include the receiver or receivers, or other persons or corporations charged with the duty of the management of the business of a common carrier.

Sec. 8. That nothing in this act shall be held to limit the duty or liability of common carriers or impair the rights of their employees under any other act or acts of Congress, or to affect the prosecution of any pending proceeding or right of action under the act of Congress, entitled "An act relating to liability of common carriers in the District of Columbia and territories, and to common carriers engaged in commerce between the states and between the states and foreign nations to their employees," approved June 11, 1906.

Sec. 9. That any right of action given by this act to a person suffering injury shall survive to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury.

Section 6 amended and Section 9 added by Amendment of 1910.

# APPENDIX L

[Public—No. 6]

[s. 2517.]

AN ACT providing for mediation, conciliation, and arbitration in controversies between certain employers and their employees.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the provisions of this act shall apply to any common carrier or carriers and their officers, agents, and employees, except masters of vessels and seamen, as defined in section forty-six hundred and twelve, Revised Statutes of the United States, engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, for a continuous carriage or shipment from one state or territory of the United States or the District of Columbia to any other state or territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

The term "employees" as used in this act shall include all persons actually engaged in any capacity in train operation or train service of any description, and notwithstanding that the cars upon or in which they are employed may be held and operated by the carrier under lease or other contract: *Provided, however,* That this act shall not be held to apply to employees of street railroads and shall apply only to employees engaged in railroad train service. In every such case the carrier shall be responsible for the acts and defaults of such employees in the same manner and to the same extent as if said cars were owned by it and said employees directly employed by it, and any provisions to the contrary of any such lease or other contract shall be

binding only as between the parties thereto and shall not affect the obligations of said carrier either to the public or to the private parties concerned.

A common carrier subject to the provisions of this act is hereinafter referred to as an "employer," and the employees of one or more of such carriers are hereinafter referred to as "employees."

Sec. 2. That whenever a controversy concerning wages, hours of labor, or conditions of employment shall arise between an employer or employers and employees subject to this act interrupting or threatening to interrupt the business of said employer or employers to the serious detriment of the public interest, either party to such controversy may apply to the Board of Mediation and Conciliation created by this act and invoke its services for the purpose of bringing about an amicable adjustment of the controversy; and upon the request of either party the said board shall with all practicable expedition put itself in communication with the parties to such controversy and shall use its best efforts, by mediation and conciliation, to bring them to an agreement; and if such efforts to bring about an amicable adjustment through mediation and conciliation shall be unsuccessful, the said board shall at once endeavor to induce the parties to submit their controversy to arbitration in accordance with the provisions of this act.

In any case in which an interruption of traffic is imminent and fraught with serious detriment to the public interest, the Board of Mediation and Conciliation may, if in its judgment such action seems desirable, proffer its services to the respective parties to the controversy.

In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this act either party to the said agreement may apply to the Board of Mediation and Conciliation for an expression of opinion from such board as to the meaning or application of such agreement and the said board shall upon receipt of such request give its opinion as soon as may be practicable.

Sec. 3. That whenever a controversy shall arise between an employer or employers and employees subject to this act, which can not be settled through mediation and conciliation in the manner provided in the preceding section, such con-

troversy may be submitted to the arbitration of a board of six, or, if the parties to the controversy prefer so to stipulate, to a board of three persons, which board shall be chosen in the following manner: In the case of a board of three the employer or employers and the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; and the two arbitrators thus chosen shall select the third arbitrator; but in the event of their failure to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Board of Mediation and Conciliation. In the case of a board of six, the employer or employers and the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators, and the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators; but in the event of their failure to name the two arbitrators within fifteen days after their first meeting the said two arbitrators, or as many of them as have not been named, shall be named by the Board of Mediation and Conciliation.

In the event that the employees engaged in any given controversy are not members of a labor organization, such employees may select a committee which shall have the right to name the arbitrator, or the arbitrators, who are to be named by the employees as provided above in this section.

Sec. 4. That the agreement to arbitrate—

First. Shall be in writing;

Second. Shall stipulate that the arbitration is had under the provisions of this act;

Third. Shall state whether the board of arbitration is to consist of three or six members;

Fourth. Shatt be signed by duly accredited representatives of the employer or employers and of the employees;

Fifth. Shall state specifically the questions to be submitted to the said board for decision;

Sixth. Shall stipulate that a majority of said board shall be competent to make a valid and binding award;

Seventh. Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board, as provided for in the agreement, within which the said board shall commence its hearings;

Eighth. Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That this period shall be thirty days unless a different period be agreed to;

Ninth. Shall provide for the date from which the award shall become effective and shall fix the period during which the said award shall continue in force;

Tenth. Shall provide that the respective parties to the award will each faithfully execute the same;

Eleventh. Shall provide that the award and the papers and proceedings, including the testimony relating thereto, certified under the hands of the arbitrators, and which shall have the force and effect of a bill of exceptions, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arises or the arbitration is entered into, and shall be final and conclusive upon the parties to the agreement unless set aside for error of law apparent on the record;

Twelfth. May also provide that any difference arising as to the meaning or the application of the provisions of an award made by a board of arbitration shall be referred back to the same board or to a subcommittee of such board for a ruling, which ruling shall have the same force and effect as the original award; and if any member of the original board is unable or unwilling to serve another arbitrator shall be named in the same manner as such original member was named.

Sec. 5. That for the purposes of this act the arbitrators herein provided for, or either of them, shall have power to administer oaths and affirmations, sign subpœnas, require the attendance and testimony of witnesses, and the production of such books, papers, contracts, agreements, and documents material to a just determination of the matters under investigation as may be ordered by the court; and may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as is provided for in the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and the amendments thereto.

Sec. 6. That every agreement of arbitration under this act shall be acknowledged by the parties thereto before a notary

public or a clerk of the district or the circuit court of appeals of the United States, or before a member of the Board of Mediation and Conciliation, the members of which are hereby authorized to take such acknowledgements; and when so acknowledged shall be delivered to a member of said board or transmitted to said board to be filed in its office.

When such agreement of arbitration has been filed with the said board, or one of its members, and when the said board, or a member thereof, has been furnished the names of the arbitrators chosen by the respective parties to the controversy, the board, or a member thereof, shall cause a notice in writing to be served upon the said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the board, and advising them of the period within which, as provided in the agreement of arbitration, they are empowered to name such arbitrator or arbitrators.

When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Board of Mediation and Conciliation; and in the event of their failure to agree upon any or upon all of the necessary arbitrators withhin the period fixed by this act they shall, at the expiration of such period, notify the Board of Mediation and Conciliation of the arbitrators selected, if any, or of their failure to make or to complete such selection.

If the parties to an arbitration desire the reconvening of a board to pass upon any controversy arising over the meaning or application of an award they shall jointly so notify the Board of Mediation and Conciliation, and shall state in such written notice the question or questions to be submitted to such reconvened board. The Board of Mediation and Conciliation shall thereupon promptly communicate with the members of the board of arbitration or a subcommittee of such board appointed for such purpose pursuant to the provisions of the agreement of arbitration, and arrange for the reconvening of said board or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the board will meet for hearings upon the matters in controversy to be submitted to it.

Sec. 7. That the board of arbitration shall organize and select its own chairman and make all necessary rules for conducting

its hearings; but in its award or awards the said board shall confine itself to findings or recommendations as to the questions specifically submitted to it or matters directly bearing thereon. All testimony before said board shall be given under oath or affirmation, and any member of the board of arbitration shall have the power to administer oaths or affirmations. It may employ such assistants as may be necessary in carrying on its work. It shall, whenever practicable, be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may adjourn for its deliberations. The board of arbitration shall furnish a certified copy of its awards to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the testimony taken at the hearings, certified under the hands of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as provided in paragraph eleven of section four of this act. And said board shall also furnish a certified copy of its award, and the papers and proceedings, including the testimony relating thereto, to the Board of Mediation and Conciliation, to be filed in its office.

The United States Commerce Court, the Interstate Commerce Commission, and the Bureau of Labor Statistics are hereby authorized to turn over to the Board of Mediation and Conciliation upon its request any papers and documents heretofore filed with them and bearing upon mediation or arbitration proceedings held under the provisions of the act approved June first, eighteen hundred and ninety-eight, providing for mediation and arbitration.

Sec. 8. That the award, being filed in the clerk's office of a district court of the United States as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matters of law apparent upon the record, in which case said award shall go into practical operation, and judgment be entered accordingly, when such exceptions shall have been finally disposed of either by said district court or on appeal therefrom.

At the expiration of ten days from the decision of the district court upon exceptions taken to said award as aforesaid judg-

ment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided.

The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

If exceptions to an award are finally sustained, judgment shall be entered setting aside the award in whole or in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Nothing in this act contained shall be construed to require an employee to render personal service without his consent, and no injunction or other legal process shall be issued which shall compel the performance by any employee against his will of a contract for personal labor or service.

Sec. 9. That whenever receivers appointed by a Federal court are in possession and control of the business of employers covered by this act the employees of such employers shall have the right to be heard through their representatives in such court upon all questions affecting the terms and conditions of their employment; and no reduction of wages shall be made by such receivers without the authority of the court therefor, after notice to such employees, said notice to be given not less than twenty days before the hearing upon the receivers' petition or application, and to be posted upon all customary bulletin boards along or upon the railway or in the customary places on the premises of other employers covered by this act.

Sec. 10. That each member of the board of arbitration created under the provisions of this act shall receive such compensation as may be fixed by the Board of Mediation and Conciliation, together with his traveling and other necessary expenses. The sum of $25,000, or so much thereof as may be necessary, is hereby appropriated, to be immediately available and to continue available until the close of the fiscal year ending June thirtieth, nine-

teen hundred and fourteen, for the necessary and proper expenses incurred in connection with any arbitration or with the carrying on of the work of mediation and conciliation, including per diem, traveling, and other necessary expenses of members or employees of boards of arbitration and rent in the District of Columbia, furniture, office fixtures and supplies, books, salaries, traveling expenses, and other necessary expenses of members or employees of the Board of Mediation and Conciliation, to be approved by the chairman of said board and audited by the proper accounting officers of the Treasury.

Sec. 11. There shall be a Commissioner of Mediation and Conciliation, who shall be appointed by the President, by and with the advice and consent of the Senate, and whose salary shall be $7,500 per annum, who shall hold his office for a term of seven years and until a successor qualifies, and who shall be removable by the President only for misconduct in office. The President shall also designate not more than two other officials of the Government who have been appointed by and with the advice and consent of the Senate, and the officials thus designated, together with the Commissioner of Mediation and Conciliation, shall constitute a board to be known as the United States Board of Mediation and Conciliation.

There shall also be an Assistant Commissioner of Mediation and Conciliation, who shall be appointed by the President, by and with the advice and consent of the Senate, and whose salary shall be $5,000 per annum. In the absence of the Commissioner of Mediation and Conciliation, or when that office shall become vacant, the assistant commissioner shall exercise the functions and perform the duties of that office. Under the direction of the Commissioner of Meditation and Conciliation, the assistant commissioner shall assist in the work of mediation and conciliation and when acting alone in any case he shall have the right to take acknowledgments, receive agreements of arbitration, and cause the notices in writing to be served upon the arbitrators chosen by the respective parties to the controversy, as provided for in section five of this act.

The act of June first, eighteen hundred and ninety-eight, relating to the mediation and arbitration of controversies between railway companies and certain classes of their employees is hereby repealed: *Provided*, That any agreement of arbitration which,

at the time of the passage of this act, shall have been executed in accordance with the provisions of said act of June first, eighteen hundred and ninety-eight, shall be governed by the provisions of said act of June first, eighteen hundred and ninety-eight, and the proceedings thereunder shall be conducted in accordance with the provisions of said act.

Approved, July 15, 1913.

# APPENDIX M

[Public—No. 377.]

[H. R. 16450.]

AN ACT to punish the unlawful breaking of seals of railroad cars containing interstate or foreign shipments, the unlawful entering of such cars, the stealing of freight and express packages or baggage or articles in process of transportation in interstate shipment, and the felonious asportation of such freight or express packages or baggage or articles therefrom into another district of the United States, and the felonious possession or reception of the same.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whoever shall unlawfully break the seal of any railroad car containing interstate or foreign shipments of freight or express, or shall enter any such car with intent, in either case, to commit larceny therein; or whoever shall steal or unlawfully take, carry away, or conceal, or by fraud or deception obtain from any railroad car, station house, platform, depot, steamboat, vessel, or wharf, with intent to convert to his own use any goods or chattels moving as, or which are a part of or which constitute, an interstate or foreign shipment of freight or express, or shall buy, or receive, or have in his possession any such goods or chattels, knowing the same to have been stolen; or whoever shall steal or shall unlawfully take, carry away, or by fraud or deception obtain, with intent to convert to his own use, any baggage which shall have come into the possession of any common carrier for transportation from one state or territory or the District of Columbia to another state or territory or the District of Columbia, or to a foreign country, or from a foreign country to any state or territory or the Distict of Columbia, or shall break into, steal, take, carry away, or conceal any of the contents of such baggage, or shall buy, receive, or have in his possession any such baggage or any article therefrom of whatsoever nature, knowing the same to have been stolen, shall in each case be fined not more than five thousand dollars or imprisoned not more than ten years, or both, and prosecutions therefor may be instituted in any district wherein the crime shall have been committed. The carrying or

transporting of any such freight, express, baggage, goods, or chattels from one state or territory or the District of Columbia into another state or territory or the District of Columbia, knowing the same to have been stolen, shall constitute a separate offense and subject the offender to the penalties above described for unlawful taking, and prosecutions therefor may be instituted in any district into which such freight, express, baggage, goods, or chattels shall have been removed or into which they shall have been brought by such offender.

Sec. 2. That nothing in this act shall be held to take away or impair the jurisdiction of the courts of the several states under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any state shall be a bar to any prosecution hereunder for the same act or acts.

Approved, Feb. 13, 1913.

# APPENDIX N

## National Motor Vehicle Theft Act.

**An Act To punish the transportation of stolen motor vehicles in interstate or foreign commerce.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Sec. 1. That this Act may be cited as the National Motor Vehicle Theft Act.

Sec. 2. That when used in this Act:

(a) The term "motor vehicle" shall include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails;

(b) The term "interstate or foreign commerce" as used in this Act shall include transportation from one State, Territory, or the District of Columbia, to another State, Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia.

Sec. 3. That whoever shall transport or cause to be transported in interstate or foreign commerce a motor vehicle, knowing the same to have been stolen, shall be punished by a fine of not more than $5,000, or by imprisonment of not more than five years, or both.

Sec. 4. That whoever shall receive, conceal, store, barter, sell, or dispose of any motor vehicle, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be punished by a fine of not more than $5,000, or by imprisonment of not more than five years, or both.

Sec. 5. That any person violating this Act may be punished in any district in or through which such motor vehicle has been transported or removed by such offender.

Received by the President, October 17, 1919.

(Note by the Department of State.—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the house of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.)

# APPENDIX O.

## AN ACT TO ESTABLISH A UNITED STATES SHIPPING BOARD.

[Public—No. 260—64th Congress.]

**AN ACT To establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries; to regulate carriers by water engaged in the foreign and interstate commerce of the United States; and for other purposes.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That when used in this act:

The term "common carrier by water in foreign commerce" means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade: *Provided*, That a cargo boat commonly called an ocean tramp shall not be deemed such "common carrier by water in foreign commerce."

The term "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

The term "common carrier by water" means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port.

The term "other person subject to this act" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

The term "person" includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

Sec. 2. That within the meaning of this act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president and managing directors are citizens of the United States and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof.

The provisions of this act shall apply to receivers and trustees of all persons to whom the act applies, and to the successors or assignees of such person.

Sec. 3. That a board is hereby created, to be known as the United States Shipping Board, and hereinafter referred to as the board. The board shall be composed of five commissioners, to be appointed by the President, by and with the advice and consent of the Senate; said board shall annually elect one of its members as chairman and one as vice chairman.

The first commissioners appointed shall continue in office for terms of two, three, four, five, and six years, respectively, from the date of their appointment, the term of each to be designated by the President, but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds.

The commissioners shall be appointed with due regard to their fitness for the efficient discharge of the duties imposed on them by this act, and to a fair representation of the geographical divisions of the country. Not more than three of the commissioners shall be appointed from the same political party. No commissioner shall be in the employ of or hold any official relation to any common carrier by water or other person subject to this act, or own any stocks or bonds thereof, or be pecuniarily interested therein. No commissioner shall actively engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the board shall not impair

the right of the remaining members of the board to exercise all its powers. The board shall have an official seal, which shall be judicially noticed.

The board may adopt rules and regulations in regard to its procedure and the conduct of its business.

Sec. 4. That each member of the board shall receive a salary of $7,500 per annum. The board shall appoint a secretary, at a salary of $5,000 per annum, and employ and fix the compensation of such attorneys, officers, naval architects, special experts, examiners, clerks, and other employees as it may find necessary for the proper performance of its duties and as may be appropriated for by the Congress. The President, upon the request of the board, may authorize the detail of officers of the military, naval, or other services of the United States for such duties as the board may deem necessary in connection with its business.

With the exception of the secretary, a clerk to each commissioner, the attorneys, naval architects, and such special experts and examiners as the board may from time to time find necessary to employ for the conduct of its work, all employees of the board shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law.

The expense of the board, including necessary expenses for transportation, incurred by the members of the board or by its employees under its orders, in making any investigation, or upon official business in any other place than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the board

Until otherwise provided by law the board may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the board.

Sec. 5. That the board, with the approval of the President, is authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit. for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and altera-

The term "person" includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

Sec. 2. That within the meaning of this act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president and managing directors are citizens of the United States and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof.

The provisions of this act shall apply to receivers and trustees of all persons to whom the act applies, and to the successors or assignees of such person.

Sec. 3. That a board is hereby created, to be known as the United States Shipping Board, and hereinafter referred to as the board. The board shall be composed of five commissioners, to be appointed by the President, by and with the advice and consent of the Senate; said board shall annually elect one of its members as chairman and one as vice chairman.

The first commissioners appointed shall continue in office for terms of two, three, four, five, and six years, respectively, from the date of their appointment, the term of each to be designated by the President, but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds.

The commissioners shall be appointed with due regard to their fitness for the efficient discharge of the duties imposed on them by this act, and to a fair representation of the geographical divisions of the country. Not more than three of the commissioners shall be appointed from the same political party. No commissioner shall be in the employ of or hold any official relation to any common carrier by water or other person subject to this act, or own any stocks or bonds thereof, or be pecuniarily interested therein. No commissioner shall actively engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the board shall not impair

the right of the remaining members of the board to exercise all its powers. The board shall have an official seal, which shall be judicially noticed.

The board may adopt rules and regulations in regard to its procedure and the conduct of its business.

Sec. 4. That each member of the board shall receive a salary of $7,500 per annum. The board shall appoint a secretary, at a salary of $5,000 per annum, and employ and fix the compensation of such attorneys, officers, naval architects, special experts, examiners, clerks, and other employees as it may find necessary for the proper performance of its duties and as may be appropriated for by the Congress. The President, upon the request of the board, may authorize the detail of officers of the military, naval, or other services of the United States for such duties as the board may deem necessary in connection with its business.

With the exception of the secretary, a clerk to each commissioner, the attorneys, naval architects, and such special experts and examiners as the board may from time to time find necessary to employ for the conduct of its work, all employees of the board shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law.

The expense of the board, including necessary expenses for transportation, incurred by the members of the board or by its employees under its orders, in making any investigation, or upon official business in any other place than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the board

Until otherwise provided by law the board may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the board.

Sec. 5. That the board, with the approval of the President, is authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit. for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and altera-

tions of such vessels: *Provided,* That neither the board nor any corporation formed under section eleven in which the United States is then a stockholder shall purchase, lease, or charter any vessel—

(*a*) Which is then engaged in the foreign or domestic commerce of the United States, unless it is about to be withdrawn from such commerce without any intention on the part of the owner to return it thereto within a reasonable time;

(b) Which is under the registry or flag of a foreign country which is then engaged in war;

(c) Which is not adapted, or can not by reasonable alterations and repairs be adapted to the purposes specified in this section;

(d) Which, upon expert examination made under the direction of the board, a written report of such examination being filed as a public record, is not without alteration or repair found to be at least seventy-five per centum as efficient as at the time it was originally put in commission as a seaworthy vessel.

Sec. 6. That the President may transfer either permanently or for limited periods to the board such vessels belonging to the War or Navy Department as are suitable for commercial uses and not required for military or naval use in time of peace, and cause to be transferred to the board vessels owned by the Panama Railroad Company and not required in its business.

Sec. 7. That the board, upon terms and conditions prescribed by it and approved by the President, may charter, lease, or sell to any person, a citizen of the United States, any vessel so purchased, construed, or transferred.

Sec. 8. That when any vessel purchased or constructed by or transferred to the board as herein provided, and owned by the United States, becomes, in the opinion of the board, unfit for the purposes of this Act, it shall be appraised and sold at public or private competitive sale after due advertisement free from the conditions and restrictions of this act.

Sec. 9. That any vessel purchased, chartered, or leased from the board may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided,* That foreign-built vessels admitted to American registry or enrollment and license under this act, and vessels owned chartered, or leased by any corporation in

which the United States is a stockholder, and vessels sold, leased, or chartered to any person a citizen of the United States, as provided in this act, may engage in the coastwise trade of the United States.

Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein. No such vessel, without the approval of the board, shall be transferred to a foreign registry or flag, or sold; nor, except under regulations prescribed by the board, be chartered or leased.

When the United States is at war, or during any national emergency the existence of which is declared by proclamation of the President,[1] no vessel registered or enrolled and licensed under the laws of the United States shall, without the approval of the board, be sold, leased, or chartered to any person not a citizen of the United States, or transferred to a foreign registry or flag. No vessel registered or enrolled and licensed under the laws of the United States, or owned by any person a citizen of the United States, except one which the board is prohibited from purchasing. shall be sold to any person not a citizen of the United States or transferred to a foreign registry or flag, unless such vessel is first tendered to the board at the price in good faith offered by others, or, if no such offer, at a fair price to be determined in the manner provided in section ten.

Any vessel sold, chartered, leased, transferred, or operated in violation of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than $5,000 or to imprisonment of not more than five years, or both such fine and imprisonment.

1. The proclamation by the President of a national emergency as provided herein was made Feb. 5, 1917.

Sec. 10. That the President, upon giving to the person interested such reasonable notice in writing as in his judgment the circumstances permit, may take possession, absolutely or temporarily, for any naval or military purpose, of any vessel pur-

chased, leased, or chartered from the board: *Provided*, That if, in the judgment of the President, an emergency exists requiring such action he may take possession of any such vessel without notice.

Thereafter, upon ascertainment by agreement or otherwise, the United States shall pay the person interested the fair actual value based upon normal conditions at the time of taking of the interest of such person in every vessel taken absolutely, or if taken for a limited period, the fair charter value under normal conditions for such period. In case of disagreement as to such fair value it shall be determined by appraisers, one to be appointed by the board, one by the person interested, and a third by the two so appointed. The finding of such appraisers shall be final and binding upon both parties.

Sec. 11. That the board, if in its judgment such action is necessary to carry out the purposes of this act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States.[1] The total capital stock thereof shall not exceed $50,000,000. The board may, for and on behalf of the United states, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this act. The board, with the approval of the President, may sell any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein: *Provided*, That no corporation in which the United States is a stockholder, formed under the authority of this section, shall engage in the operation of any vessel constructed, purchased, leased, chartered, or transferred under the authority of this act unless the board shall be unable, after a bona fide effort, to contract with any person a citizen of the United States for the purchase, lease, or charter of such vessel under such terms and conditions as may be prescribed by the board.

1. The United States Shipping Board Emergency Fleet Corporation, capitalized at $50,000,000, has been incorporated in accordance with this provision. All the stock, except qualifying shares of trustees, is owned by the Shipping Board.

The board shall give public notice of the fact that vessels are offered and the terms and conditions upon which a contract will be made, and shall invite competitive offerings. In the event the board shall, after full compliance with the terms of this proviso, determine that it is unable to enter into a contract with such private parties for the purchase, lease, or charter of such vessel, it shall make a full report to the President, who shall examine such report, and if he shall approve the same he shall make an order declaring that the conditions have been found to exist which justify the operation of such vessel by a corporation formed under the provisions of this section.

At the expiration of five years from the conclusion of the present European war the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved. The date of the conclusion of the war shall be declared by proclamation of the President. The vessels and other property of any such corporation shall revert to the board. The board may sell, lease, or charter such vessels as provided in section seven and shall dispose of the property other than vessels on the best available terms and, after payment of all debts and obligations, deposit the proceeds thereof in the Treasury to its credit. All stock in such corporations owned by others than the United States at the time of dissolution shall be taken over by the board at a fair and reasonable value and paid for with funds to the credit of the board. In case of disagreement, such value shall be determined in the manner provided in section ten.

Sec. 12. That the board shall investigate the relative cost of building merchant vessels in the United States and in foreign maritime countries, and the relative cost, advantages, and disadvantages of operating in the foreign trade vessels under United States registry and under foreign registry. It shall examine the rules under which vessels are constructed abroad and in the United States, and the methods of classifying and rating same, and it shall examine into the subject of marine insurance, the number of companies in the United States, domestic and foreign, engaging in marine insurance, the extent of the insurance on hulls and cargoes placed or written in the United States, and the extent of reinsurance of American maritime risks in foreign companies, and ascertain what steps may be necessary to develop an ample

marine insurance system as an aid in the development of an American merchant marine. It shall examine the navigation laws of the United States and the rules and regulations thereunder, and make such recommendations to the Congress as it deems proper for the amendment, improvement, and revision of such laws, and for the development of the American merchant marine. It shall investigate the legal status of mortgage loans on vessel property, with a view to means of improving the security of such loans and of encouraging investment in American shipping.

It shall, on or before the first day of December in each year, make a report to the Congress, which shall include its recommendations and the results of its investigations, a summary of its transactions, and a statement of all expenditures and receipts under this act, and of the operations of any corporation in which the United States is a stockholder, and the names and compensation of all persons employed by the board.

Sec. 13. That for the purpose of carrying out the provisions of sections five and eleven no liability shall be incurred exceeding a total of $50,000,000 and the Secretary of the Treasury, upon the request of the board approved by the President, shall from time to time issue and sell or use any of the bonds of the United States now available in the Treasury under the acts of August fifth, nineteen hundred and nine, February fourth, nineteen hundred and ten, and March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed $50,000,000: *Provided*, That any bonds issued and sold or used under the provisions of this section may be made payable at such time within fifty years after issue as the Secretary of the Treasury may fix, instead of fifty years after the date of issue, as prescribed in the act of August fifth, nineteen hundred and nine.

The proceeds of such bonds and the net proceeds of all sales, charters, and leases of vessels and of sales of stock made by the board, and all other moneys received by it from any source, shall be covered into the Treasury to the credit of the board, and are hereby permanently appropriated for the purpose of carrying out the provisions of sections five and eleven.

Sec. 14. That no common carrier by water shall directly or indirectly—

First. Pay, or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow, a deferred rebate to any shipper. The term "deferred rebate" in this act means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term "fighting ship" in this act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

Third. Retaliate against any shipper by refusing, or threatening to refuse, space accomodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accomodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than $25,000 for each offense.

Sec. 15. That every common carrier by water, or other person subject to this act, shall file immediately with the board a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this act, or modification or cancellation thereof, to which it may be a party of conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or

advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The board may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this act, and shall approve all other agreements modifications, or cancellations.

Agreements existing at the time of the organization of the board shall be lawful until disapproved by the board. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the board.

All agreements, modifications, or cancellations made after the organization of the board shall be lawful only when and as long as approved by the board, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

Every agreement, modification, or cancellation lawful under this section shall be expected from the provisions of the act approved July second, eighteen hundred and ninety, entitled, "An act to protect trade and commerce against unlawful restraints and monopolies," and amendments and acts supplementary thereto, and the provisions of sections seventy-three to seventy-seven, both inclusive, of the act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," and amendments and acts supplementary thereto.

Whoever violates any provision of this section shall be liable to a penalty of $1,000 for each day such violation continues, to be recovered by the United States in a civil action.

Sec. 16. That it shall be unlawful for any common carrier by water, or other person subject to this act, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Second. To allow any person to obtain transportation for property at less than the regular rates then established and enforced on the line of such carrier, by means of false billing. false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

Third. To induce, persuade, or otherwise influence any marine insurance company or underwriter, or agent thereof, not to give a competing carrier by water as favorable a rate of insurance on a vessel or cargo, having due regard to the class of vessel or cargo, as is granted to such carrier or other person subject to this act.

Sec. 17. That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the board finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

Every such carrier and every other person subject to this act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or un-

reasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

Sec. 18. That every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property.

Every such carrier shall file with the board and keep open to public inspection in the form and manner and within the time prescribed by the board, the maximum rates, fares, and charges for or in connection with transportation between points on its own route; and if a through route has been established, the maximum rates, fares, and charges for or in connection with transportation between points on its own route and points on the route of any other carrier by water.

No such carrier shall demand, charge, or collect a greater compensation for such transportation than the rates, fares, and charges filed in compliance with this section, except with the approval of the board and after ten days' public notice in the form and manner prescribed by the board, stating the increase proposed to be made; but the board for good cause shown may waive such notice.

Whenever the board finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged, collected, or observed by such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice.

Sec. 19. That whenever a common carrier by water in interstate commerce reduces its rates on the carriage of any species of freight to or from competitive points below a fair and remunerative basis with the intent of driving out or otherwise injuring a competitive carrier by water, it shall not increase such rates unless after hearing the board finds that such proposed in-

crease rests upon changed conditions other than the elimination of said competition.

Sec. 20. That it shall be unlawful for any common carrier by water or other person subject to this act, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this act for transportation in interstate or foreign commerce, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment or prejudice of any carrier; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

Nothing in this act shall be construed to prevent the giving of such information in response to any legal proccess issued under the authority of any court, or to any officer or agent of the Government of the United States, or of any State, Territory, District, or possession thereof, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime, or to another carrier, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

Sec. 21. That the board may require any common carrier by water, or other person subject to this act, or any officer, receiver, trustee, lessee, agent, or employee thereof to file with it any priodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this act. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the board so requires, and shall be furnished in the form and within the time prescribed by the board. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this section

shall forfeit to the United States the sum of $100 for each day of such default.

Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than $1,000, or imprisonment for not more than one year, or to both such fine and imprisonment.

Sec. 22. That any person may file with the board a sworn complaint setting forth any violation of this act by a common carrier by water, or other person subject to this act, and asking reparation for the injury, if any, caused thereby. The board shall furnish a copy of the complaint to such carrier or other person, who shall within a reasonable time specified by the board, satisfy the complaint or answer it in writing. If the complaint is not satisfied the board shall, except as otherwise provided in this act, investigate it in such manner and by such means, and made under this act shall continue in force for such time, not is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

The board, upon its own motion, may in like manner and, except as to orders for the payment of money, with the same powers, investigate any violation of this act.

Sec. 23. Orders of the board relating to any violation of this act shall be made only after full hearing, and upon a sworn complaint or in proceedings instituted of its own motion.

All orders of the board other than for the payment of money made under this act shall continue in force for such time, not exceeding two years, as shall be prescribed therein by the board, unless suspended, modified, or set aside by the board or any court of competent jurisdiction.

Sec. 24. That the board shall enter of record a written report of every investigation made under this act in which a hearing has been held, stating its conclusions, decision, and order, and, if reparation is awarded, the findings of facts on which the award is made, and shall furnish a copy of such report to all parties to the investigation.

The board may publish such reports in the form best adapted for public information and use, and such authorized publications shall, without further proof or authentication, be competent evidence of such reports in all courts of the United States and of the States, Territories, Districts, and possessions thereof.

Sec. 25. That the board may reverse, suspend, or modify, upon such notice and in such manner as it deems proper, any order made by it. Upon application of any party to a decision or order it may grant a rehearing of the same or any matter determined therein, but no such application for or allowance of a rehearing shall, except by special order of the board, operate as a stay of such order.

Sec. 26. The board shall have power, and it shall be its duty whenever complaint shall be made to it, to investigate the action of any foreign Government with respect to the privileges afforded and burdens imposed upon vessels of the United States engaged in foreign trade whenever it shall appear that the laws, regulations, or practices of any foreign Government operate in such a manner that vessels of the United States are not accorded equal privileges in foreign trade with vessels of such foreign countries or vessels of other foreign countries, either in trade to or from the ports of such foreign country or in respect of the passage or transportation through such foreign country of passengers or goods intended for shipment or transportation in such vessels of the United States, either to or from ports of such foreign country or to or from ports of other foreign countries. It shall be the duty of the board to report the results of its investigation to the President with its recommendations and the President is hereby authorized and empowered to secure by diplomatic action equal privileges for vessels of the Uniteed States engaged in such foreign trade. And if by such diplomatic action the President shall be unable to secure such qual privileges then the President shall advise Congress as to the facts and his conclusions by a special message, if deemed important in the public interest, in order that proper action may be taken thereon.

Sec. 27. That for the purpose of investigating alleged violations of this act, the board may by subpœna compel the attendance of witnesses and the production of books, papers, documents, and other evidence from any place in the United States at any designated place of hearing. Subpœnas may be signed

by any commissioner, and oaths or affirmations may be administered, witnesses examined, and exidence received by any comsioner or examiner, or, under the direction of the board, by any person authorized under the laws of the United States or of any State, Territory, District, or possession thereof to administer oaths. Persons so acting under the direction of the board and witnesses shall, unless employees of the board, be entitled to the same fees and mileage as in the courts of the United States. Obedience to any such subpœna shall, on application by the board, be enforced as are orders of the board other than for the payment of money.

Sec. 28. That no person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to the subpœna of the board or of any court in any proceeding based upon or growing out of any alleged violation of this act; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpœna and under oath, he may so testify or produce evidence, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 29. That in case of violation of any order of the board, other than an order for the payment of money, the board, or any party injured by such violation, or the Attorney General, may apply to a district court having jurisdiction of the parties; and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce obedience thereto by a writ of injunction or other proper process, mandatory or otherwise.

Sec. 30. That in case of violation of any order of the board for the payment of money the person to whom such award was made may file in the district court for the district in which such person resides, or in which is located any office of the carrier or other person to whom the order was directed, or in which is located any point of call on a regular route operated by the carrier, or in any court of general jurisdiction of a State, Territory, District, or possession of the United States having jurisdiction of the parties, a petition or suit setting forth briefly the causes

for which he claims damages and the order of the board in the premises.

In the district court the findings and order of the board shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs, nor shall he be liable for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If a petitioner in a district court finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as part of the costs of the suit.

All parties in whose favor the board has made an award of reparation by a single order may be joined as plaintiffs, and all other parties to such order may be joined as defendants, in a single suit in any district in which any one such plaintiff could maintain a suit against any one such defendant. Service of process against any such defendant not found in that district may be made in any district in which is located any office of, or point of call on a regular route operated by, such defendant. Judgment may be entered in favor of any plaintiff against the defendant liable to that plaintiff.

No petition or suit for the enforcement of an order for the payment of moneys shall be maintained unless filed within one year from the date of the order.

Sec. 31. That the venue and procedure in the courts of the United States in suits brought to enforce, suspend, or set aside, in whole or in part, any order of the board shall, except as herein otherwise provided, be the same as in similar suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district court having jurisdiction of the parties.

Sec. 32. That whoever violates any provision of this act, except where a different penalty is provided, shall be guilty of a misdemeanor, punishable by fine not to exceed $5,000.

Sec. 33. That this act shall not be construed to affect the power or jurisdiction of the Interstate Commerce Commission, nor to confer upon the board concurrent power or jurisdiction over any matter within the power or jurisdiction of such commission; nor shall this act be construed to apply to intrastate commerce.

Sec. 34. That if any provision of this act, or the application of such provision to certain circumstances, is held unconstitu-

tional, the remainder of the act, and the application of such provision to circumstances other than those as to which it is held unconstitutional, shall not be affected thereby.

Sec. 35. That for the fiscal year ending June thirtieth, nineteen hundred and seventeen, the sum of $100,000 is hereby appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, for the purpose of defraying the expenses of the establishment and maintenance of the board, including the payment of salaries herein authorized.

Sec. 36. The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise destined for a foreign or domestic port whenever he shall have satisfactory reason to believe that the master, owner, or other officer of such vessel or other vehicle refuses or declines to accept or receive freight or cargo in good condition tendered for such port of destination or for some intermediate port of call, together with the proper freight or transportation charges therefor, by any citizen of the United States, unless the same is fully laden and has no space accommodations for the freight or cargo so tendered, due regard being had for the proper loading of such vessel or vehicle, or unless such freight or cargo consists of merchandise for which such vessel or vehicle is not adaptable.

Approved, September 7, 1916.

United States Compiled Statutes 1919 Sections 8146a to 8146q.

The Shipping Act called the Merchant Marine Act has been amended. Fully to understand the law the amendments are copied in full as follows:

**An Act To provide for the promotion and maintenance of the American merchant marine, to repeal certain emergency legislation, and provide for the disposition, regulation, and use of property acquired thereunder, and for other purposes.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and

operated privately by citizens of the United States; and it is hereby declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, in so far as may not be inconsistent with the express provisions of this Act, the United States Shipping Board shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.

SEC. 2. (a) That the following Acts and parts of Acts are hereby repealed, subject to the limitations and exceptions hereinafter, in this Act, provided:

(1) The emergency shipping fund provisions of the Act entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes," approved June 15, 1917, as amended by the Act entitled "An Act to amend the emergency shipping fund provisions of the Urgent Deficiency Appropriation Act, approved June 15, 1917, so as to empower the President and his designated agents to take over certain transportation systems for the transporation of shipyard and plant employees, and for other purposes," approved April 22, 1918, and as further amended by the Act entitled "An Act making appropriation to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes," approved November 4, 1918;

(2) Section 3 of such Act of April 22, 1918;

(3) The paragraphs numbered 2 and 3 under the heading "Emergency shipping fund" in such Act of November 4, 1918; and

(4) The Act entitled "An Act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other purposes," approved July 18, 1918.

(5) Sections 5, 7, and 8 Shipping Act, 1916.

(b) The repeal of such Acts or parts of Acts is subject to the following limitations:

(1) All contracts or agreements lawfully entered into before the passage of this Act under any such Act or part of Act shall be assumed and carried out by the United States Shipping Board, hereinafter called "the board."

(2) All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject to the provisions of subdivision (c) of this section, as if this Act had not been passed.

(3) The repeal shall not have the effect of extinguishing any penalty incurred under such Acts or parts of Acts, but such Acts or parts of Acts shall remain in force for the purpose of sustaining a prosecution for enforcement of the penalty therein provided for the violation thereof.

(4) The board shall have full power and authority to complete or conclude any construction work begun in accordance with the provisions of such Acts or parts of Acts if, in the opinion of the board, the completion or conclusion thereof is for the best interests of the United States.

(c) As soon as practicable after the passage of this Act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such Act or parts of Acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: *Provided*, That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed.

SEC. 3. (a) That section 3 of the "Shipping Act, 19196," is amended to read as follows:

"SEC. 3. That a board is hereby created to be known as the United States Shipping Board and hereinafter referred to as the board. The board shall be composed of seven commissioners, to be appointed by the President, by and with the advice and consent of the Senate; and the President shall

designate the member to act as chairman of the board, and the board may elect one of its members as vice chairman. Such commissioners shall be appointed as soon as praticable after the enactment of this Act and shall continue in office two for a term of one year, and the remaining five for terms of two, three, four, five, and six years, respectively, from the date of their appointment, the term of each to be designated by the President, but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds.

"The commissioners shall be appointed with due regard to their fitness for the efficient discharge of the duties imposed on them by this Act, and two shall be appointed from the States touching the Pacific Ocean, two from the States touching the Atlantic Ocean, one from the States touching the Gulf of Mexico, one from the States touching the Great Lakes and one from the interior, but not more than one shall be appointed from the same State. Not more than four of the commissioners shall be appointed from the same political party. A vacancy in the board shall be filled in the same manner as the original appointments. No commissioner shall take any part in the consideration or decision of any claim or particular controversy in which he has a pecuniary interest.

"Each commissioner shall devote his time to the duties of his office, and shall not be in the employ of or hold any official relation to any common carrier or other person subject to this Act, nor while holding such office acquire any stock or bonds thereof or become pecuniarily interested in any such carrier.

"The duties of the board may be so divided that under its supervision the directorship of various activities may be assigned to one or more commissioners. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the board shall not impair the right of the remaining members of the board to exercise all its powers. The board shall have an official seal, which shall be judicially noticed.

"The board may adopt rules and regulations in regard to its procedure and the conduct of its business. The board may

employ within the limits of appropriations made therefor by Congress such attorneys as it finds necessary for proper legal service to the board in the conduct of its work, or for proper representation of the public interest in investigations made by it or proceedings pending before it whether at the board's own instance or upon complaint, or to appear for or represent the board in any case in court or other tribunal. The board shall have such other rights and perform such other duties not inconsistent with the Merchant Marine Act, 1920, as are conferred by existing law upon the board in existence at the time this section as amended takes effect.

"The commissioners in office at the time this section as amended takes effect shall hold office until all the commissioners provided for in this section as amended are appointed and qualify."

(b) The first sentence of section 4 of the "Shipping Act, 1916," is amended to read as follows:

"SEC. 4. That each member of the board shall receive a salary of $12,000 per annum."

SEC. 4. That all vessels and other property or interests of whatsoever kind, including vessels or property in course of construction or contracted for, acquired by the President through any agencies whatsoever in pursuance of authority conferred by the Acts or parts of Acts repealed by section 2 of this Act, or in pursuance of the joint resolution entitled "Joint resolution authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes," approved May 12, 1917, with the exception of vessels and property the use of which is in the opinion of the President required by any other branch of the Government service of the United States, are hereby transferred to the board: *Provided*, That all vessels in the military and naval service of the United States, including the vessels assigned to river and harbor work, inland waterways, or vessels for such needs in the course of construction or under contract by the War Department, shall be exempt from the provisions of this Act.

SEC. 5. That in order to accomplish the declared purposes of this Act, and to carry out the policy declared in section 1 hereof, the board is authorized and directed to sell, as soon as practicable, consistent with good business methods and the objects and purposes to be attained by this Act, at public or private competitive sale after appraisement and due advertisement, to persons who are citizens of the United States except as provided in section 6 of this Act, all of the vessels referred to in section 4 of this Act or otherwise acquired by the board. Such sale shall be made at such prices and on such terms and conditions as the board may prescribe, but the completion of the payment of the purchase price and interest shall not be deferred more than fifteen years after the making of the contract of sale. The board in fixing or accepting the sale price of such vessels shall take into consideration the prevailing domestic and foreign market price of, the available supply of, and the demand for vessels, existing freight rates and prospects of their maintenance, the cost of constructing vessels of similar types under prevailing conditions, as well as the cost of the construction or purchase price of the vessels to be sold, and any other facts or conditions that would influence a prudent, solvent business man in the sale of similar vessels or property which he is not forced to sell. All sales made under the authority of this Act shall be subject to the limitations and restrictions of section 9 of the "Shipping Act, 1916," as amended.

SEC. 6. That the board is authorized and empowered to sell to aliens, at such prices and on such terms and conditions as it may determine, not inconsistent with the provisions of section 5 (except that completion of the payment of the purchase price and interest shall not be deferred more than ten years after the making of the contract of sale), such vessels as it shall, after careful investigation, deem unnecessary to the promotion and maintenance of an efficient American merchant marine; but no such sale shall be made unless the board, after diligent effort, has been unable to sell, in accordance with the terms and conditions of section 5, such vessels to persons citizens of the United States, and has upon an affirmative vote of not less than five of its members, spread upon the minutes of the board, determined to make such sale; and it shall make as a part of its records a full statement of its reasons for making such sale. Deferred payments

of purchase price of vessels under this section shall bear interest at the rate of not less than 5½ per centum per annum, payable semiannually.

SEC. 7. That the board is authorized and directed to investigate and determine as promptly as possible after the enactment of this Act and from time to time thereafter what steamship lines should be established and put in operation from ports in the United States or any Territory, District, or possession thereof to such world and domestic markets as in its judgment are desirable for the promotion, development, expansion, and maintenance of the foreign and coastwise trade of the United States and an adequate postal service, and to determine the type, size, speed, and other requirements of the vessels to be employed upon such lines and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent service. The board is authorized to sell, and if a satisfactory sale can not be made, to charter such of the vessels referred to in section 4 of this Act or otherwise acquired by the board, as will meet these requirements to responsible persons who are citizens of the United States who agree to establish and maintain such lines upon such terms of payment and other conditions as the board may deem just and necessary to secure and maintain the service desired; and if any such steamship line is deemed desirable and necessary, and if no such citizen can be secured to supply such service by the purchase or charter of vessels on terms satisfactory to the board, the board shall operate vessels on such line until the business is developed so that such vessels may be sold on satisfactory terms and the service maintained, or unless it shall appear within a reasonable time that such line can not be made self-sustaining. The Postmaster General is authorized, notwithstanding the Act entitled "An Act to provide for ocean mail service between the United States and foreign ports, and to promote commerce," approved March 3, 1891, to contract for the carrying of the mails over such lines at such price as may be agreed upon by the board and the Postmaster General: *Provided*, That preference in the sale or assignment of vessels for operation on such steamship lines shall be given to persons who are citizens of the United States who have the support, financial and otherwise, of the domestic communities primarily

interested in such lines if the board is satisfied of the ability of such persons to maintain the service desired and proposed to be maintained, or to persons who are citizens of the United States who may then be maintaining a service from the port of the United States to or in the general direction of the world market port to which the board has determined that such service should be established: *Provided further,* That where steamship lines and regular service have been established and are being maintained by ships of the board at the time of the enactment of this Act, such lines and service shall be maintained by the board until, in the opinion of the board, the maintenance thereof is unbusinesslike and against the public interests: *And provided further,* That whenever the board shall determine, as provided in this Act, that trade conditions warrant the establishment of a service or additional service under Government administration where a service is already being given by persons, citizens of the United States, the rates and charges for such Government service shall not be less than the cost thereof, including a proper interest and depreciation charge on the value of Government vessels and equipment employed therein.

SEC. 8. That it shall be the duty of the board, in cooperation with the Secretary of War, with the object of promoting, encouraging, and developing ports and transportation facilities in connection with water commerce over which it has jurisdiction, to investigate territorial regions and zones tributary to such ports, taking into consideration the economics of transportation by rail, water and highway and the natural direction of the flow of commerce; to investigate the causes of the congestion of commerce at ports and the remedies applicable there to; to investigate the subject of water terminals, including the necessary docks, warehouses, apparatus, equipment, and appliances in connection therewith, with a view to devising and suggesting the types most appropriate for different locations and for the most expeditious and economical transfer or interchange of passengers or property between carriers by water and carriers by rail; to advise with communities regarding the appropriate location and plan of construction of wharves, piers, and water terminals; to investigate the practicability and advantages of harbor, river, and port improvements in connection with foreign and coastwise trade; and to investigate any other

matter that may tend to promote and encourage the use by vessels of ports adequate to care for the freight which would naturally pass through such ports: *Provided,* That if after such investigation the board shall be of the opinion that rates, charges, rules, or regulations of common carriers by rail subject to the jurisdiction of the Interstate Commerce Commission are detrimental to the declared object of this section, or that new rates, charges, rules, or regulations, new or additional port terminal facilities, or affirmative action on the part of such common carriers by rail is necessary to promote the objects of this section, the board may submit its findings to the Interstate Commerce Commission for such action as such commission may consider proper under existing law.

SEC. 9. That if the terms and conditions of any sale of a vessel made under the provisions of this Act include deferred payments of the purchase price, the board shall require, as part of such terms and conditions, that the purchaser of the vessel shall keep the same insured (a) against loss or damage by fire, and against marine risks and disasters, and war and other risks if the board so specifies, with such insurance companies, associations or underwriters, and under such forms of policies, and to such an amount, as the board may prescribe or approve; and (b) by protection and indemnity insurance with such insurance companies, associations, or underwriters and under such forms of policies, and to such an amount as the board may prescribe or approve. The insurance required to be carried under this section shall be made payable to the board and/or to the parties as interest may appear. The board is authorized to enter into any agreement that it deems wise in respect to the payment and/or the guarantee of premiums of insurance.

SEC. 10. That the board may create out of net revenue from operations and sales, and maintain and administer, a separate insurance fund, which it may use to insure in whole or in part. against all hazards commonly covered by insurance policies in such cases, any interest of the United States (1) in any vessel, either constructed or in process of construction and (2) in any plants or materials heretofore or hereafter acquired by the board or hereby transferred to the board.

SEC. 11. That during a period of five years from the enactment of this Act the board may annually set aside out of the revenues from sales and operations a sum not exceeding $25,000,000, to be known as its construction loan fund, to be used in aid of the construction of vessels of the best and most efficient type for the establishment and maintenance of service on steamship lines deemed desirable and necessary by the board, and such vessels shall be equipped with the most modern, the most efficient, and the most economical machinery and commercial appliances. The board shall use such fund to the extent required upon such terms as the board may prescribe to aid persons, citizens, of the United States, in the construction by them in private shipyards in the United States of the foregoing class of vessels. No aid shall be for a greater sum than two-thirds of the cost of the vessel or vessels to be constructed, and the board shall require such security, including a first lien upon the entire interest in the vessel or vessels so constructed as it shall deem necessary to insure the repayment of such sum with interest thereon and the maintenance of the service for which such vessel or vessels are built.

SEC. 12. That all vessels may be reconditioned and kept in suitable repair and until sold shall be managed and operated by the board or chartered or leased by it on such terms and conditions as the board shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in sections 1 and 5 of this Act; and the United States Shipping Board Emergency Fleet Corporation shall continue in existence and have authority to operate vessels, unless otherwise directed by law, until all vessels are sold in accordance with the provisions of this Act, the provision in section 11 of the "Shipping Act, 1916," to the contrary notwithstanding.

SEC. 13. That the board is further authorized to sell all property other than vessels transferred to it under section 4 upon such terms and conditions as the board may determine and prescribe.

SEC. 14. That the net proceeds derived by the board prior to July 1, 1921, from any activities authorized by this Act, or by the "Shipping Act, 1916," or by the Acti specified in section 2 of this Act, except such an amount as the board shall deem necessary to withhold as operating capital, for the purposes of sec-

tion 12 hereof, and for the insurance fund authorized in section 10 hereof, and for the construction loan fund authorized in section 11 hereof, shall be covered into the Treasury of the United States to the credit of the board and may be expended by it, within the limits of the amounts heretofore or hereafter authorized, for the construction, requisitioning, or purchasing of vessels. After July 1, 1921, such net proceeds, less such an amount as may be authorized annually by Congress to be withheld as operating capital, and less such sums as may be needed for such insurance and construction loan funds, shall be covered into the Treasury of the United States as miscellaneous receipts. The board shall, as rapidly as it deems advisable, withdraw investment of Government funds made during the emergency under the authority conferred by the Acts or parts of Acts repealed by Section 2 of this Act and cover the net proceeds thereof into the Treasury of the United States as miscellaneous receipts.

SEC. 15. That the board shall not require payment from the War Department for the charter hire of vessels owned by the United States Government furnished by the board from July 1, 1918, to June 30, 1919, inclusive, for the use of such department.

SEC. 16. That all authorization to purchase, build, requisition, lease, exchange, or otherwise acquire houses, buildings or land under the Act entitled "An Act to authorize and empower the United States Shipping Board Emergency Fleet Corporation to purchase, lease, requisition, or otherwise acquire, and to sell or otherwise dispose of improved or unimproved lands, houses, buildings, and for other purposes," approved March 1, 1918, is hereby terminated: *Provided, however,* That expenditures may be made under said Act for the repair of houses and buildings already constructed, and the completion of such houses or buildings as have heretofore been contracted for or are under construction, if considered advisable, and the board is authorized and directed to dispose of all such properties or the interests of the United States in all such properties at as early a date as practicable, consistent with good business and the best interests of the United States.

SEC. 17. That the board is authorized and directed to take over on January 1, 1921, the possession and control of, and

to maintain and develop, all docks, piers, warehouses, wharves and terminal equipment and facilities, including all leasehold easements, rights of way, riparian rights and other rights, estates and interests therein or appurtenant thereto, acquired by the President by or under the Act entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28, 1918.

The possession and control of such other docks, piers, warehouses, wharves and terminal equipment and facilities or parts thereof, including all leasehold easements, rights of way, riparian rights and other rights, estates or interests therein or appurtenant thereto which were acquired by the War Department or the Navy Department for military or naval purposes during the war emergency may be transferred by the President to the board whenever the President deems such transfer to be for the best interests of the United States.

The President may at any time he deems it necessary, by order setting out the need therefor and fixing the period of such need, permit or transfer the possession and control of any part of the property taken over by or transferred to the board under this section to the War Department or the Navy Department for their needs, and when in the opinion of the President such need therefor ceases the possession and control of such property shall revert to the board. None of such property shall be sold except as may be hereafter provided by law.

SEC. 18. That section 9 of the "Shipping Act, 1916," is amended to read as follows:

"SEC. 9. That any vessel purchased, chartered, or leased from the board, by persons who are citizens of the United States, may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided,* That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered by the board to any person a citizen of the United States, as provided in this Act, may

engage in the coastwise trade of the United States while owned, leased, or chartered by such a person.

"Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein.

"It shall be unlawful to sell, transfer or mortgage, or, except under regulations prescribed by the board, to charter, any vessel purchased from the board or documented under the laws of the United States to any person not a citizen of the United States, or to put the same under a foreign registry or flag, without first obtaining the board's approval.

"Any vessel chartered, sold, transferred or mortgaged to a person not a citizen of the United States or placed under a foreign registry or flag, or operated, in violation of any provisions of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than $5,000, or to imprisonment for not more than five years, or both."

SEC. 19. (1) The board is authorized and directed in aid of the accomplishment of the purpose of this Act.

(a) To make all necessary rules and regulations to carry out the provisions of this Act;

(b) To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country; and

(c) To request the head of any department, board, bureau, or agency of the Government to suspend, modify, or annul rules or regulations which have been established by such department, board, bureau, or agency, or to make new rules or regulations

affecting shipping in the foreign trade other than such rules or regulations relating to the Public Health Service, the Consular Service, and the Steamboat Inspection Service.

(2) No rule or regulation shall hereafter be established by any department, board, bureau, or agency of the Government which affect shipping in the foreign trade, except rules or regulations affecting the Public Health Service, the Consular Service, and the Steamboat Inspection Service, until such rule or regulation has been submitted to the board for its approval and final action has been taken thereon by the board or the President.

(3) Whenever the head of any department, board, bureau, or agency of the Government refuses to suspend, modify, or annul any rule or regulation, or make a new rule or regulation upon request of the board, as provided in subdivision (c) of paragraph (1) of this section, or objects to the decision of the board in respect to the approval of any rule or regulation, as provided in paragraph (2) of this section, either the board or the head of the department, board, bureau, or agency which has established or is attempting to establish the rule or regulation in question may submit the facts to the President, who is hereby authorized to establish or suspend, modify, or annul such rule or regulation.

(4) No rule or regulation shall be established which in any manner gives vessels owned by the United States any preference or favor over those vessels documented under the laws of the United States and owned by persons who are citizens of the United States.

SEC. 20. (1) That section 14 of the Shipping Act, 1916, as amended, is amended to read as follows:

"SEC. 14. That no common carrier by water shall, directly or indirectly, in respect to the transportation by water of passengers or property between a port of a State, Territory, District, or possession of the United States and any other such port or a port of a foreign country,—

"First. Pay, or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow, a deferred rebate to any shipper. The term 'deferred rebate' in this Act means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving

of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of referment, the shipper has complied with the terms of the rebate agreement or arrangement.

"Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term 'fighting ship' in this Act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing or reducing competition by driving another carrier out of said trade.

"Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

"Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

"Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than $25,000 for each offense."

(2) The Shipping Act, 1916, as amended, is amended by inserting after section 14 a new section to read as follows:

"SEC. 14a. The board upon its own initiative may, or upon complaint shall, after due notice to all parties in interest and hearing, determine whether any person, not a citizen of the United States and engaged in transportation by water of passengers or property—

"(1) Has violated any provision of section 14, or

"(2) Is a party to any combination, agreement, or understanding, express or implied, that involves in respect to transportation of passengers or property between foreign ports, de-

ferred rebates or any other unfair practice designated in section 14, and that excludes from admission upon equal terms with all other parties thereto, a common carrier by water which is a citizen of the United States and which has applied for such admission.

"If the board determines that any such person has violated any such provision or is a party to any such combination, agreement, or understanding, the board shall thereupon certify such fact to the Secretary of Commerce. The Secretary shall thereafter refuse such person the right of entry for any ship owned or operated by him or by any carrier directly or indirectly controlled by him, into any port of the United States, or any Territory, District, or possession thereof, until the board certifies that the violation has ceased or such combination, agreement, or understanding has been terminated."

SEC. 21. That from and after February 1, 1922, the coastwise laws of the United States shall extend to the island Territories and possessions of the United States not now covered thereby, and the board is directed prior to the expiration of such year to have established adequate steamship service at reasonable rates to accommodate the commerce and the passenger travel of said islands and to maintain and operate such service until it can be taken over and operated and maintained upon satisfactory terms by private capital and enterprise: *Provided,* That if adequate shipping service is not established by February 1, 1922, the President shall extend the period herein allowed for the establishment of such service in the case of any island Territory or possession for such time as may be necessary for the establishment of adequate shipping facilities therefor: *Provided further,* That until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Islands, the Government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places in the Philippine Archipelago: *And provided further,* That the foregoing provisions of this section shall not take effect with reference to the Philippine Islands until the President of the United States after a full investigation of the local needs and conditions shall, by proclamation, declare that an adequate shipping service has been

established as herein provided and fix a date for the going into effect of the same.

SEC. 22. That the Act entitled "An Act giving the United States Shipping Board power to suspend present provisions of law and permit vessels of foreign registry and foreign-built vessels admitted to American registry under the Act of August 18, 1914, to engage in the coastwise trade during the present war and for a period of one hundred and twenty days thereafter, except the coastwise trade with Alaska," approved October 6, 1917, is hereby repealed: *Provided*, That all foreign-built vessels admitted to American registry, owned on February 1, 1920, by persons citizens of the United States, and all foreign-built vessels owned by the United States at the time of the enactment of this Act, when sold and owned by persons citizens of the United States, may engage in the coastwise trade so long as they continue in such ownership, subject to the rules and regulations of such trade: *Provided*, That the board is authorized to issue permits for the carrying of passengers in foreign ships if it deems it necessary so to do, operating between the Territory of Hawaii and the Pacific Coast up to February 1, 1922.

SEC. 23. That the owner of a vessel documented under the laws of the United States and operated in foreign trade shall, for each of the ten taxable years while so operated, beginning with the first taxable year ending after the enactment of this Act, be allowed as a deduction for the purpose of ascertaining his net income subject to the war-profits and excess profits taxes imposed by Title III of the Revenue Act of 1918 an amount equivalent to the net earnings of such vessel during such taxable year, determined in accordance with rules and regulations to be made by the board: *Provided*, That such owner shall not be entitled to such deduction unless during such taxable year he invested, or set aside under rules and regulations to be made by the board in a trust fund for investment, in the building in shipyards in the United States of new vessels of a type and kind approved by the board, an amount, to be determined by the Secretary of the Treasury and certified by him to the board, equivalent to the war-profits and excess-profits taxes that would have been payable by such owner on account of the net earnings of such vessels but for the deduction allowed under the provisions of this section: *Provided further*, That at least two-

thirds of the cost of any vessel constructed under this paragraph shall be paid for out of the ordinary funds or capital of the person having such vessel constructed.

That during the period of ten years from the enactment of this Act any person a citizen of the United States who may sell a vessel documented under the laws of the United States and built prior to January 1, 1914, shall be exempt from all income taxes that would be payable upon any of the proceeds of such sale under Title I, Title II, and Title III of the Revenue Act of 1918 if the entire proceeds thereof shall be invested in the building of new ships in American shipyards, such ships to be documented under the laws of the United States and to be of a type approved by the board.

SEC. 24. That all mails of the United States shipped or carried on vessels shall, if practicable, be shipped or carried on American-built vessels documented under the laws of the United States. No contract hereafter made with the Postmaster General for carrying mails on vessels so built and documented shall be assigned or sublet, and no mails covered by such contract shall be carried on any vessel not so built and documented. No money shall be paid out of the Treasury of the United States on or in relation to any such contract for carrying mails on vessels so built and documented when such contract has been assigned or sublet or when mails covered by such contract are in violation of the terms thereof carried on any vessel not so built and documented. The board and the Postmaster General, in aid of the development of a merchant marine adequate to provide for the maintenance and expansion of the foreign or coastwise trade of the United States and of a satisfactory postal service in connection therewith, shall from time to time determine the just and reasonable rate of compensation to be paid for such service, and the Postmaster General is hereby authorized to enter into contracts within the limits of appropriations made therefor by Congress to pay for the carrying of such mails in such vessels at such rate. Nothing herein shall be affected by the Act entitled "An Act to provide for ocean mail service between the United States and foreign ports, and to promote commerce," approved March 3, 1891.

SEC. 25. That for the classification of vessels owned by the United States, and for such other purposes in connection there-

with as are the proper functions of a classification bureau, all departments, boards, bureaus, and commissions of the Government are hereby directed to recognize the American Bureau of Shipping as their agency so long as the American Bureau of Shipping continues to be maintained as an organization which has no capital stock and pays no dividends: *Provided,* That the Secretary of Commerce and the chairman of the board shall each appoint one representative who shall represent the Government upon the executive committee of the American Bureau of Shipping, and the bureau shall agree that these representatives shall be accepted by them as active members of such committee. Suct representatives of the Government shall serve without any compensation, except necessary traveling expenses: *Provided further,* That the official list of merchant vessels published by the Government shall hereafter contain a notation clearly indicating all vessels classed by the American Bureau of Shipping.

SEC. 26. That cargo vessels documented under the laws of the United States may carry not to exceed sixteen persons in addition to the crew between any ports or places in the United States or its Districts, Territories, or possessions, or between any such port or place and any foreign port, or such vessels shall not be held to be "passenger- vessels" or "vessels carrying passengers" within the meaning of the inspection laws and the rules and regulations thereunder: *Provided,* That nothing herein shall be taken to exempt such vessels from the laws, rules, and regulations respecting life-saving equipment: *Provided further,* That when any such vessel carries persons other than the crew as herein provided for, the owner, agent, or master of the vessel shall first notify such persons of the presence on board of any dangerous articles, as defined by law, or of any other condition or circumstance which would constitute a risk of safety for passenger or crew.

The privilege bestowed by this section on vessels of the United States shall be extended insofar as the foreign trade is concerned to the cargo vessels of any nation which allows the like privilege to cargo vessels of the United States in trades not restricted to vessels under its own flag.

Failure on the part of the owner, agent, or master of the vessel to give such notice shall subject the vessel to a penalty of

$500, which may be mitigated or remitted by the Secretary of Commerce upon a proper representation of the facts.

SEC. 27. That no merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by sections 18 or 22 of this Act: *Provided*, That this section shall not apply to merchandise transported between points within the continental United States, excluding Alaska, over through routes heretofore or hereafter recognized by the Interstate Commerce Commission for which routes rate tariffs have been or shall hereafter be filed with said commission when such routes are in part over Canadian rail lines and their own or other connecting water facilities: *Provided further*, That this section shall not become effective upon the Yukon river until the Alaska Railroad shall be completed and the Shipping Board shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic.

SEC. 28. That no common carrier shall charge, collect or receive, for transportation subject to the Interstate Commerce Act of persons or property, under any joint rate, fare or charge, or under any export, import, or other proportional rate, fare, or charge, which is based in whole or in part on the fact that the persons or property affected thereby is to be transported to, or has been transported from, any port in a possession or dependency of the United States, or in a foreign country, by a carrier by water in foreign commerce, any lower rate, fare, or charge than that charged, collected, or received by it for the transportation of persons, or of a like kind of property, ofr the same distance, in the same direction, and over the same route, in connection with commerce wholly within the United States, unless the vessel so transporting such persons or property is, or unless it was at the time of such transportation by water, documented under the laws of the United States. Whenever the board is of the opin-

ion, however, that adequate shipping facilities to or from any port in a possession or dependency of the United States or a foreign country are not afforded by vessels so documented, it shall certify this fact to the Interstate Commerce Commission, and the commission may, by order, suspend the operation of the provisions of this section with respect to the rates, fares, and charges for the transportation by rail of persons and property transported from, or to be transported, to such ports, for such length of time and under such terms and conditions as it may prescribe in such order, or in any order supplemental thereto. Such suspension of operation of the provisions of this section may be terminated by order of the commission whenever the board is of the opinion that adequate shipping facilities by such vessels to such ports are afforded and shall so certify to the commission.

SEC. 29. (a) That whenever used in this section—

(1) The term "association" means any association, exchange, pool, combination, or other arrangement for concerted action; and

(2) The term "marine insurance companies" means any persons, companies, or associations, authorized to write marine insurance or reinsurance under the laws of the United States or of a State, Territory, District, or possession thereof.

(b) Nothing contained in the "antitrust laws" as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, shall be construed as declaring illegal an association entered into by marine insurance companies for the following purposes: To transact a marine insurance and reinsurance business in the United States and in foreign countries and to reinsure or otherwise apportion among its membership the risks undertaken by such association or any of the component members.

SEC. 30. Subsection A. That this section may be cited as the "Ship Mortgage Act, 1920."

DEFINITIONS.

Subsection B. When used in this section—

(1) The term "document" includes registry and enrollment and license;

(2) The term "documented" means registered or enrolled or licensed under the laws of the United States, whether permanently or temporarily;

(3) The term "port of documentation" means the port at which the vessel is documented, in accordance with law;

(4) The term "vessel of the United States" means any vessel documented under the laws of the United States and such vessel shall be held to continue to be so documented until its documents are surrendered with the approval of the board; and

(5) The term "mortgagee," in the case of a mortgage involving a trust deed and a bond issue thereunder, means the trustee designated in such deed.

RECORDING OF SALES, CONVEYANCES, AND MORTGAGES OF VESSELS OF THE UNITED STATES.

Subsection C. (a) No sale, conveyance, or mortgage which, at the time such sale, conveyance, or mortgage is made, includes a vessel of the United States or any portion thereof, as the whole or any part of the property sold, conveyed, or mortgaged shall be the grantor or mortgagor, his heir or devisee, and a person having actual notice thereof, until such bill of sale, conveyance, or mort- port of documentation of such vessel, as provided inn subdivision (b) of this subsection.

(b) Such collector of customs shall record bills of sale, conveyances, and mortgages, delivered to him, in the order of their reception, in books to be kept for that purpose and indexed to show—

(1) The name of the vessel;

(2) The names of the parties to the sale, conveyance, or mortgage;

(3) The time and date of reception of the instrument;

(4) The interest in the vessel sold, conveyed, or mortgaged; and

(5) The amount and date of maturity of the mortgage.

Sebsection D. (a) A valid mortgage which, at the time it is made includes the whole of any vessel of the United States of 200 gross tons and upwards, shall in addition have, in respect to such vessel and as of the date of the compliance with all the provisions of this subdivision, the preferred status given by the provisions of subsection M, if—

(1) The mortgage is indorsed upon the vessel's documents in accordance with the provisions of this section;

(2) The mortgage is recorded as provided in subsection C, together with the time and date when the mortgage is so indorsed;

(3) An affidavit is filed with the record of such mortgage to the effect that the mortgage is made in good faith and without any design to hinder, delay, or defraud any existing or future creditor of the mortagor or any lienor of the mortgaged vessel;

(4) The mortgage does not stipulate that the mortgagee waives the preferred status thereof; and

(5) The mortgagee is a citizen of the United States.

(b) Any mortgage which complies in respect to any vessel with the conditions enumerated in this subsection is hereafter in this section called a "preferred mortgage" as to such vessel.

(c) There shall be indorsed upon the documents of a vessel covered by a preferred mortgage—

(1) The names of the mortgagor and mortgagee;

(2) The time and date the indorsement is made;

(3) The amount and date of maturity of the mortgage; and

(4) Any amount required to be indorsed by the provisions of subdivision (e) or (f) of this subsection.

(d) Such indorsement shall be made (1) by the collector of customs of the port of documentation of the mortgaged vessel, or (2) by the collector of customs of any port in which the vessel is found, if such collector is directed to make the indorsement by the collector of cutsoms of the port of documentation; and no clearance shall be issued to the vessel until such indorsement is made. The collector of customs of the port of documentation shall give such direction by wire or letter at the request of the mortgagee and upon the tender of the cost of communication of such direction. Whenever any new document is issued for the vessel, such indorsement shall be transferred to and indorsed upon the new document by the collector of customs.

(e) A mortgage which includes property other than a vessel shall not be held a preferred mortgage unless the mortgage provides for the separate discharge of such property by the payment of a specified portion of the mortgage indebtedness.

If a preferred mortgage so provides for the separate discharge, the amount of the portion of such payment shall be indorsed upon the documents of the vessel.

(f) If a preferred mortgage includes more than one vessel and provides for the separate discharge of each vessel by the payment of a portion of the mortgage indebtedness, the amount of such portion of such payment shall be indorsed upon the documents of the vessel. In case such mortgage does not provide for the separate discharge of a vessel and the vessel is to be sold upon the order of a district court of the United States in a suit in rem in admiralty, the court shall determine the portion of the mortgage indebtedness increased by 20 per centum (1) which, in the opinion of the court, the approximate value of the vessel bears to the approximate value of all the vessels covered by the mortgage, and (2) upon the payment of which the vessel shall be discharged from the mortgage.

Subsection E. The collector of customs upon the recording of a preferred mortgage shall deliver two certified copies thereof to the mortgagor who shall place, and use due diligence to retain, one copy on board the mortgaged vessel and cause such copy and the documents of the vessel to be exhibited by the master to any person having business with the vessel, which may give rise to a maritime lien upon the vessel or to the sale, conveyance, or mortgage thereof. The master of the vessel shall, upon the request of any such person, exhibit to him the documents of the vessel and the copy of any preferred mortgage of the vessel placed on board thereof.

Subsection F. The mortgagor (1) shall, upon request of the mortgagee, disclose in writing to him prior to the execution of any preferred mortgage, the existence of any maritime lien, prior mortgage, or other obligation or liability upon the vessel to be mortgaged, that is known to the mortgagor, and (2), without the consent of the mortgagee, shall not incur, after the execution of such mortgage and before the mortgagee has had a reasonable time in which to record the mortgage and have indorsements in respect thereto made upon the documents of the vessel, any contractual obligation creating a lien upon the vessel other than a lien for wages of stevedores when employed directly by the owner, operator, master, ship's husband,

or agent of the vessel, for wages of the crew of the vessel, for general average, or for salvage, including contract salvage, in respect to the vessel.

Subsection G. (a) The collector of customs of the port of documentation shall, upon the request of any person, record notice of his claim of a lien upon a vessel covered by a preferred mortgage, together with the nature, date of creation, and amount of the lien, and the name and address of the person. Any person who has caused notice of his claim of lien to be so recorded shall, upon a discharge in whole or in part of the indebtedness, forthwith file with the collector of customs a certificate of such discharge. The collector of customs shall thereupon record the certificate.

(b) The mortgagor, upon a discharge in whole or in part of the mortgage indebtedness, shall forthwith file with the collector of customs for the port of documentation of the vessel. a certificate of such discharge. Such collector of customs shall thereupon record the certificate. In case of a vessel covered by a preferred mortgage, the collector of customs at the port of documentation shall (1) indorse upon the documents of the vessel, or direct the collector of customs at any port in which the vessel is found, to so indorse, the fact of such discharge, and (2) shall deny clearance to the vessel until such indorsement is made.

Subsection H. (a) No bill of sale, conveyance, or mortgage shall be recorded unless it states the interest of the grantor or mortgagor in the vessel, and the interest so sold, conveyed, or mortgaged.

(b) No bill of sale, conveyance, mortgage, notice of claim of lien, or certificate of discharge thereof, shall be recorded unless previously acknowledged before a notary public or other officer authorized by a law of the United States, or of a State, Territory, District, or possession thereof, to take acknowledgment of deeds.

(c) In case of a change in the port of documentation of a vessel of the United States, no bill of sale, conveyance, or mortgage shall be recorded at the new port of documentation unless there is furnished to the collector of customs of such port, together with the copy of the bill of sale, conveyance, or mortgage to be recorded, a certified copy of the record of the vessel

at the former port of documentation furnished by the collector of such port. The collector of customs at the new port of documentation is authorized and directed to record such certified copy.

(d) A preferred mortgage may bear such rate of interest as is agreed by the parties thereto.

Subsection I. Each collector of customs shall permit records made under the provisions of this section to be inspected during office hours, under such reasonable regulations as the collector may establish. Upon the request of any person the collector of customs shall furnish him from the records of the collector's office (1) a certificate setting forth the names of the owners of any vessel, the interest held by each owner, and the material facts as to any bill of sale or conveyance of, any mortgage covering, or any lien or other incumbrance upon, a specified vessel, (2) a certified copy of any bill of sale, conveyance, mortgage, notice of claim of lien, or certificate of discharge in respect to such vessel, or (3) a certified copy as required by subdivision (c) of subsection H. The collector of customs shall collect a fee for any bill of sale, conveyance, or mortgage recorded, or any certificate or certified copy furnished, by him, in the amount of 20 cents a folio with a minimum charge of $1.00. All such fees shall be covered into the Treasury of the United States as miscellaneous receipts.

PENALTIES.

Subsection J. (a) If the master of the vessel willfully fails to exhibit the documents of the vessel or the copy of any preferred mortgage thereof, as required by subsection E, the board of local inspectors of vessels having jurisdiction of the license of the master, may suspend or cancel such license, subject to the provisions of "An Act to provide for appeals from decisions of boards of local inspectors of vessels and for other purposes," approved June 10, 1918.

(b) A mortgagor who, with intent to defraud, violates any provision of subsection F, and if the mortgagor is a corporation or association, the president or other principal executive officer of the corporation or association, shall upon conviction thereof be held guilty of a misdemeanor and shall be fined not more than $1,000 or imprisoned not more than 2 years, or both.

The mortgaged indebtedness shall thereupon become immediately due and payable at the election of the mortgagee.

(c) If any person enters into any contract secured by, or upon the credit of, a vessel of the United States covered by a preferred mortgage, and suffers pecuniary loss by reason of the failure of the collector of customs, or any officer, emplyee, or agent thereof, properly to perorm any duty required of the collector under the provisions of this section, the collector of customs shall be liable to such person for damages in the amount of such loss. If any such person is caused any such loss by reason of the failure of the mortgagor, or master of the mortgaged vessel, or any officer, employee, or agent thereof, to comply with any provision of subsection E or F or to file an affidavit as required by subdivision (a) of subsection D, correct in each particular thereof, the mortgagor shall be liable to such person for damages in the amount of such loss. The district courts of the United States are given jurisdiction (but not to the exclusion of the courts of the several States, Territories, Districts, or possessions) of suits for the recovery of such damages, irrespective of the amount involved in the suit or the citizenship of the parties thereto. Such suit shall be begun by personal service upon the defendant within the limits of the district. Upon judgment for the plaintiff in any such suit, the court shall include in the judgment an additional amount for costs of the action and a reasonable counsel's fee to be fixed by the court.

FORECLOSURE OF PREFERRED MORTGAGES.

Subsection K. A preferred mortgage shall constitute a lien upon the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by such vessel. Upon the default of any term or condition of the mortgage, such lien may be enforced by the mortgagee by suit in rem in admiralty. Original jurisdiction of all such suits is granted to the district courts of the United States exclusively. In addition to any notice by publication, actual notice of the commencement of any such suit shall be given by the libellant, in uch manner as the court shall direct, to (1) the master, other ranking officer, or caretaker of the vessel, and (2) any person who has recorded a notice of claim of an undischarged lien upon the vessel,

as provided in subsection G, unless after search by the libellant satisfactory to the court, such mortgagor, master, other ranking officer, caretaker, or claimant is not found within the United States. Failure to give notice to any such person, as required by this subsection, shall not constitute a jurisdictional defect; but the libellant shall be liable to such person for damages in the amount of his interest in the vessel terminated by the suit. Suit in personam for the recovery of such damages may be brought in accordance with the provisions of subdivision (c) of subsection J.

Subsection L. In any suit in rem in admiralty for the enforcement of the preferred mortgage lien, the court may appoint a receiver and, in its discretion, authorize the receiver to operate the mortgaged vessel. The marshal may be authorized and directed by the court to take possession of the mortgaged vessel notwithstanding the fact that the vessel is in the possession or under the control of any person claiming a possessory common-law lien.

Subsection M. (a) When used hereinafter in this section, the term "preferred maritime lien" means (1) a lien arising prior in time to the recording and indorsement of a preferred mortgage in accordance with the provisions of this section; or (2) a lien for damages arising out of tort, for wages of a stevedore when employed directly by the owner, operator, master, ship's husband, or agent of the vessel, for wages of the crew of the vessel, for general average, and for salvage, including contract salvage.

(b) Upon the sale of any mortgaged vessel by order of a district court of the United States in any suit in rem in admiralty for the enforcement of a preferred mortgage lien thereon, all preëxisting claims in the vessel, including any possessory common-law lien of which a lienor is deprived under the provisions of subsection L shall be held terminated and shall thereafter attach, in like amount and in accordance with their respective priorities, to the proceeds of the sale; except that the preferred mortgage lien shall have priority over all claims against the vessel, except (1) preferred maritime liens, and (2) expenses and fees allowed and costs taxed, by the court.

Subsection N. (a) Upon the default of any term or condition of a preferred mortgage upon a vessel, the mortgagee may,

in addition to all other remedies granted by this section, bring suit in personam in admiralty in a district court of the United States, against the mortgagor for the amount of the outstanding mortgage indebtedness secured by such vessel or any deficiency in the full payment thereof.

(b) This section shall not be construed, in the case of a mortgage covering, in addition to vessels, realty or personalty other than vessels, or both, to authorize the enforcement by suit in rem in admiralty of the rights of the mortgagee in respect to such realty or personalty other than vessels.

TRANSFERS OF MORTGAGED VESSELS AND ASSIGNMENT OF VESSEL MORTGAGES.

Subsection O. (a) The documents of a vessel of the United States covered by a preferred mortgage may not be surrendered (except in the case of a forfeiture of the vessel or its sale by the order of any court of the United States or any foreign country) without the approval of the board. The board shall refuse such approval unless the mortgagee consents to such surrender.

(b) The interest of the mortgagee in a vessel of the United States covered by a mortgage, shall not be terminated by the forfeiture of the vessel for a violation of any law of the United States, unless the mortgagee authorized, consented, or conspired to effect the illegal act, failure, or omission which constituted such violation.

(c) Upon the sale of any vessel of the United States covered by a preferred mortgage, by order of a district court of the United States in any suit in rem in admiralty for the enforcement of a maritime lien other than a preferred maritime lien, the vessel shall be sold free from all preexisting claims thereon; but the court shall, upon the request of the mortgagee, the libellant, or any intervenor, require the purchaser at such sale to give and the mortgagor to to accept a new mortgage of the vessel for the balance of the term of the original mortgage. The conditions of such new mortgage shall be the same. so far as practicable, as those of the original mortgage and shall be subject to the approval of the court. If such new mortgage is given, the mortgagee shall not be paid from the proceeds of the sale and the amount payable as the purchase price shall

be held diminished in the amount of the new mortgage indebtedness.

(d) No rights under a mortgage of a vessel of the United States shall be assigned to any person not a citizen of the United States without the approval of the board. Any assignment in violation of any provision of this section shall be void.

(e) No vessel of the United States shall be sold by order of a district court of the United States in any suit in rem in admiralty to any person not a citizen of the United States.

MARITIME LIENS FOR NECESSARIES.

Subsection P. Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.

Subsection Q. The following persons shall be presumed to have authority from the owner to procure repairs, supplies, towage, use of dry dock or marine railway, and other necessaries for the vessel: The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is intrusted. No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

Subsection R. The officers and agents of a vessel specified in subsection Q shall be taken to include such officers and agents when appointed by a charterer, by an owner pro hac vice, or by an agreed purchaser in possession of the vessel; but nothing in this section shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor.

Subsection S. Nothing in this section shall be construed to prevent the furnisher of repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, or the mortgagee,

from waiving his right to a lien, or in the case of a preferred mortgage lien, to the preferred status of such lien, at any time, by agreement or otherwise; and this section shall not be construed to affect the rules of law now existing in regard to (1) the right to proceed against the vessel for advances, (2) laches in the enforcement of liens upon vessels, (3) the right to proceed in personam, (4) the rank of preferred maritime liens among themselves, or (5) priorities between maritime liens and mortgages, other than preferred mortgages, upon vessels of the United States.

Subsection T. This section shall supersede the provisions of all State statutes conferring liens on vessels, in so far as such statutes purport to create rights of action to be enforced by suits in rem in admiralty against vessels for repairs, supplies, towage, use of dry dock or marine railway, and other necessaries.

MISCELLANEOUS PROVISIONS.

Subsection U. This section shall not apply (1) to any existing mortgage, or (2) to any mortgage hereafter placed on any vessel now under an existing mortgage, so long as such existing mortgage remains undischarged.

Subsection V. The Secretary of Commerce is authorized and directed to furnish collectors of customs with all necessary books and records, and with certificates of registry and of enrollment and license in such form as provides for the making of all indorsements thereon requred by this section.

Subsection W. The Secretary of Commerce is authorized to make such regulations in respect to the recording and indorsing of mortgages covering vessels of the United States, as he deems necessary to the efficient execution of the provisions of this section.

Subsection X. Sections 4192 to 4196, inclusive, of the Revised Statutes of the United States, as amended, and the Act entitled "An Act relating to liens on vessels for repairs, supplies, or other necessaries," approved June 23, 1910, are repealed. This section, however, so far as not inconsistent with any of the provisions of law so repealed, shall be held a reenactment of such repealed law, and any right or obligation based upon any provision of such law and accruing prior to

such repeal, may be prosecuted in the same manner and to the same effect as if this Act had not been passed.

SEC. 31. That section 4530 of the Revised Statutes of the United States is amended to read as follows:

"SEC. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided,* Such a demand shall not be made before the expiration of, nor oftener than once in, five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in section 4529 of the Revised Statutes: *Provided further,* That notwithstanding any release signed by any seaman under section 4552 of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: *And provided further,* That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

SEC. 32. That paragraph (a) of section 10 of the Act entitled "An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, as amended, is hereby amended to read as follows:

"SEC. 10. (a) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this

section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment, whether made within or without the United States or territory subject to the jurisdiction thereof, shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500."

SEC. 33. That section 20 of Such Act of March 4, 1915, be, and is, amended to read as follows:

"SEC. 20. That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

SEC. 34. That in the judgment of Congress, articles or provisions in treaties or conventions to. which the United States is a party, which restrict the right of the United States to impose discriminating customs duties on imports entering the United States in foreign vessels and in vessels of the United

States, and which also restrict the right of the United States to impose discriminatory tonnage dues on foreign vessels and on vessels of the United States entering the United States should be terminated, and the President is hereby authorized and directed within ninety days after this Act becomes law to give notice to the several Governments, respectively, parties to such treaties or conventions, that so much thereof as imposes any such restriction on the United States will terminate on the expiration of such periods as may be required for the giving of such notice by the provisions of such treaties or conventions.

SEC. 35. That the power and authority vested in the board by this Act, except as herein otherwise specifically provided, may be exercised directly by the board, or by it through the United States Shipping Board Emergency Fleet Corporation.

SEC. 36. That if any provision of this Act is declared unconstitutional or the application of any provision to certain circumstances be held invalid, the remainder of the Act and the application of such provisions to circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 37. That when used in this Act, unless the context otherwise requires, the terms "person," "vessel," "documented under the laws of the United States," and "citizen of the United States" shall have the meaning assigned to them by sections 1 and 2 of the "Shipping Act, 1916," as amended by this Act; the term "board" means the United States Shipping Board; and the term "alien" means any person not a citizen of the United States.

SEC. 38. That section 2 of the Shipping Act, 1916, is amended to read as follows:

"SEC. 2. (a) That within the meaning of this Act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president and managing directors are citizens of the United States and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof, but in the case of a corporation, association, or partnership operating any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.

"(b) The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (c) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

"(c) Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (c) if, through any contract or understanding it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

"(d) The provisions of this Act shall apply to receivers and trustees of all persons to whom the Act applies, and to the successors or assignees of such persons."

SEC. 39. That this Act may be cited as the Merchant Marine Act, 1920.

Approved, June 5, 1920.

# APPENDIX P

## INTOXICATING LIQUORS.

## EIGHTEENTH AMENDMENT.

## CONSTITUTION OF THE UNITED STATES

**ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION**

### [ARTICLE XVIII]

FRANK L. POLK, ACTING SECRETARY OF STATE OF THE UNITED STATES OF AMERICA.

*To all to Whom these Presents shall come, Greetings*

Know Ye, That the Congress of the United States at the second session, sixty-fifth Congress begun at Washington on the third day of December in the year one thousand nine hundred and seventeen, passed a Resolution in the words and figures following: to wit—

### JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following amendment to the Constitution be, and hereby is, proposed to the States, to become valid as a part of the Constitution when ratified by the legislatures of the several States as provided by the Constitution:

"ARTICLE —

"Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

"Sec. 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

"Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Contitution, within seven years from the date of the submission hereof to the States by the Congress."

And, further, that it appears from official documents on file in this Department that the Amendment to the Constitution of the United States proposed as aforesaid has been ratified by the Legislatures of the States of Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

And, further, that the States whose Legislatures have so ratified the said proposed Amendment, constitute three fourths of the whole number of States in the United States.

Now therefore, be it known that I, Frank L. Polk, Acting Secretary of State of the United States, by virtue and in pursuance of Section 205 of the Revised Statutes of the United States, do hereby certify that the Amendment aforesaid has become valid to all intents and purposes as a part of the Constitution of the United States.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Department of State to be affixed.

Done at the City of Washington this 29th day of January in the year of our Lord one thousand nine hundred and nineteen.

[Seal.] FRANK L. POLK, Acting Secretary of State.

## NATIONAL PROHIBITION ACT.

Chap. 83, 66th Congress Session one, pp. 305, *et seq.*—An Act To prohibit intoxicating beverages, and to regulate the manufacture, production, use, and sale of high-proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye, and other lawful industries.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the short title of this Act shall be the "National Prohibition Act."

## TITLE I.

### TO PROVIDE FOR THE ENFORCEMENT OF WAR PROHIBITION.

The term "War Prohibition Act" used in this Act shall mean the provisions of any Act or Acts prohibiting the sale and manufacture of intoxicating liquors until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States. The words "beer, wine, or other intoxicating malt or vinous liquors" in the War Prohibition Act shall be hereafter construed to mean any such beverages which contain one-half of 1 per centum or more of alcohol by volume: *Provided,* That the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquid produced by the process by which beer, ale, porter or wine is produced, if it contains less than one-half of 1 per centum of alcohol by volume, and is made as prescribed in section 37 of Title II of this Act, and is otherwise denominated than as beer, ale, porter, and is contained and sold in, or from, such sealed and labeled bottles, casks, or containers as the commissioner may by regulation prescribe.

Sec. 2. The Commissioner of Internal Revenue, his assistants, agents, and inspectors, shall investigate and report violations of the War Prohibition Act to the United States attorney for the district in which committed, who shall be charged with the duty of prosecuting, subject to the direction of the Attorney General, the offenders as in the case of other offenses against laws of the United States; and such Commissioner of Internal Revenue, his assistants, agents, and inspectors may swear out warrants before United States commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the said United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury.

Sec. 3. Any room, house, building, boat, vehicle, structure, or place of any kind where intoxicating liquor is sold, manufactured, kept for sale, or bartered in violation of the War Prohibition Act, and all intoxicating liquor and all property kept and used in maintaining such a place, is hereby declared

to be a public and common nuisance, and any person who maintains or assists in maintaining such public and common nuisance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $100 nor more than $1,000, or be imprisoned for not less than thirty days or more than one year, or both. If a person has knowledge that his property is occupied or used in violation of the provisions of the War Prohibition Act and suffers the same to be so used, such property shall be subject to a lien for, and may be sold to pay, all fines and costs assessed against the occupant of such building or property for any violation of the War Prohibition Act occuring after the passage hereof, which said lien shall attach from the time of the filing of notice of the commencement of the suit in the office where the records of the transfer of real estate are kept; and any such lien may be established and enforced by legal action instituted for that purpose in any court having jurisdiction. Any violation of this title upon any leased premises by the lessee or occupant thereof shall, at the option of the lessor, work a forfeiture of the lease.

Sec. 4. The United States attorney for the district where such nuisance as is defined in this Act exists, or any officer designated by him or the Attorney General of the United States, may prosecute a suit in equity in the name of the United States to abate and enjoin the same. Actions in equity to enjoin and abate such nuisances may be brought in any court having jurisdiction to hear and determine equity causes. The jurisdiction of the courts of the United States under this section shall be concurrent with that of the courts of the several States.

If it be made to appear by affidavit, or other evidence under oath, to the satisfaction of the court, or judge in vacation, that the nuisance complained of exists, a temporary writ of injunction shall forthwith issue restraining the defendant or defendants from conducting or permitting the continuance of such nuisance until the conclusion of the trial. Where a temporary injunction is prayed for, the court may issue an order restraining the defendants and all other persons from removing or in any way interfering with the liquor or fixtures, or other things used in connection with the violation constituting the nuisance. No bond shall be required as a condition for making any order or issuing any writ of injunction under this Act.

If the court shall find the property involved was being unlawfully used as aforesaid at or about the time alleged in the petition, the court shall order that no liquor shall be manufactured, sold, bartered, or stored in such room, house, building, boat, vehicle, structure, or places of any kind, for a period of not exceeding one year, or during the war and the period of demobilization. Whenever an action to enjoin a nuisance shall have been brought pursuant to the provisions of this Act, if the owner, lessee, tenant, or occupant appears and pays all costs of the proceedings and files a bond, with sureties to be approved by the clerk of the court in which the action is brought, in the liquidated sum of not less than $500 nor more than $1,000, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein a period of one year thereafter, or during the war and period of demobilization, the court, or in vacation the judge, may, if satisfied of his good faith, direct by appropriate order that the property, if already closed or held under the order of the abatement, be delivered to said owner, and said order of abatement canceled, so far as the same may relate to said property; or if said bond be given and costs therein paid before judgment on an order of abatement, the action shall be thereby abated as to said room, house, building, boat, vehicle, structure, or place only. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability to which it may be subject by law.

In the case of the violation of any injunction, temporary or permanent, granted pursuant to the provisions of this Title, the court, or in vacation a judge thereof, may summarily try and punish the defendant. The proceedings for punishment for contempt shall be commenced by filing with the clerk of the court from which said injunction issued information under oath setting out the alleged facts constituting the violation, whereupon the court or judge shall forthwith cause a warrant to issue under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. Any person found guilty of contempt under the provisions of this section shall be punished by a fine of not less than $500 nor more than $1,000, or by imprisonment of not less than thirty days nor

more than twelve months, or by both fine and imprisonment.

Sec. 5. The Commissioner of Internal Revenue, his assistants, agents, and inspectors, and all other officers of the United States whose duty it is to enforce criminal laws, shall have all the power for the enforcement of the War Prohibition Act or any provisions thereof which is conferred by law for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquors under the laws of the United States.

Sec. 6. If any section or provision of this Act shall be held to be invalid, it is hereby provided that all other provisions of this Act which are not expressly held to be invalid shall continue in full force and effect.

Sec. 7. None of the provisions of this Act shall be construed to repeal any of the provisions of the "War Prohibition Act," or to limit or annul any order or regulation prohibiting the manufacture, sale, or disposition of intoxicating liquors within certain prescribed zones or districts, nor shall the provisions of this Act be construed to prohibit the use of the power of the military or naval authorities to enforce the regulations of the President or Secretary of War of Navy issued in pursuance of law, prohibiting the manufacture, use, possession, sale, or other disposition of intoxicating liquors during the period of the war and demobilization thereafter.

## TITLE II.

### PROHIBITION OF INTOXICATING BEVERAGES.

Sec. 1. When used in Title II and Title III of this Act (1) The word "liquor" or the phrase "intoxicating liquor" shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes: Provided, That the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquid produced by the process by which beer, ale, porter or wine is produced, if it contains less than one-half of 1 per centum of alcohol by volume, and is made as prescribed in section 37 of this title, and is other-

wise denominated than as beer, ale, or porter, and is contained or sold in, or from, such sealed and labeled bottles, casks, or containers as the commissioner may by regulation prescribe.

(2) The word "person" shall mean and include natural persons, associations, copartnerships, and corporations.

(3) The word "commissioner" shall mean Commissioner of Internal Revenue.

(4) The term "application" shall mean a formal written request supported by a verified statement of facts showing that the commissioner may grant the request.

(5) The term "permit" shall mean a formal written authorization by the commissioner setting forth specifically therein the things that are authorized.

(6) The term "bond" shall mean an obligation authorized or required by or under this Act or any regulation, executed in such form and for such a penal sum as may be required by a court, the commissioner or prescribed by regulation.

(7) The term "regulation" shall mean any regulation prescribed by the commissioner with the approval of the Secretary of the Treasury for carrying out the provisions of this Act, and the commissioner is authorized to make such regulations.

Any act authorized to be done by the commissioner may be performed by any assistant or agent designated by him for that purpose. Records required to be filed with the commissioner may be filed with an assistant commissioner or other person designated by the commissioner to receive such records.

Sec. 2. The Commissioner of Internal Revenue, his assistants, agents, and inspectors shall investigate and report violations of this Act to the United States attorney for the district in which committed, who is hereby charged with the duty of prosecuting the offenders, subject to the direction of the Attorney General, as in the case of other offenses against the laws of the United States, and such Commissioner of Internal Revenue, his assistants, agents, commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the said United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of the grand jury. Section 1014 of the Revised Statutes of the United States is hereby made applicable in the enforcement of this Act. Officers mentioned in

said section 1014 are authorized to issue search warrants under the limitations provided in Title XI of the Act approved June 15, 1917 (Fortieth Statutes at Large, page 217, *et seq.*)

Sec. 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor: *Provided*, That nothing in this Act shall prohibit the purchase and sale of warehouse receipts covering distilled spirits on deposit in Government bonded warehouses, and no special tax liability shall attach to the business of purchasing and selling such warehouse receipts.

Sec. 4. The articles enumerated in this section shall not, after having been manufactured and prepared for the market, be subject to the provisions of this Act if they correspond with the following descriptions and limitations, namely:

(a) Denatured alcohol or denatured rum produced and used as provided by laws and regulations now or hereafter in force.

(b) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopœia, National Formulary or the American Institute of Homeopathy that are unfit for use for beverage purposes.

(c) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

(d) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(e) Flavoring extracts and sirups that are unfit for use as a beverage, or for intoxicating beverage purposes.

(f) Vinegar and preserved sweet cider.

A person who manufactures any of the articles mentioned in this section may purchase and possess liquor for that purpose, but he shall secure permits to manufacture such articles and to purchase such liquor, give the bonds, keep the records, and make

the reports specified in this Act and as directed by the commissioner. No such manufacturer shall sell, use, or dispose of any liquor otherwise than as an ingredient of the articles authorized to be manufactured therefrom. No more alcohol shall be used in the manufacture of any extract, sirup, or the articles named in paragraphs b, c and d of this section which may be used for beverage purposes than the quantity necessary for extraction or solution of the elements contained therein and for the preservation of the article.

Any person who shall knowingly sell any of the articles mentioned in paragraphs a, b, c, and d of this section for beverage purposes, or any extract or sirup for intoxicating beverage purposes, or who shall sell any of the same under circumstances from which the seller might reasonably deduce the intention of the purchaser to use them for such purposes, or shall sell any beverage containing one-half of 1 per centum or more of alcohol by volume in which any extract, sirup, or other article is used as an ingredient, shall be subject to the penalties provided in section 29 of this Title. If the commissioner shall find, after notice and hearing as provided for in section 5 of this Title, that any person has sold any flavoring extract, sirup, or beverage in violation of this paragraph, he shall notify such person, and any known principal for whom the sale was made, to desist from selling such article; and it shall thereupon be unlawful for a period of one year thereafter for any person so notified to sell any such extract, sirup, or beverage without making an application for, giving a bond, and obtaining a permit so to do, which permit may be issued upon such conditions as the commissioner may deem necessary to prevent such illegal sales, and in addition the commissioner shall require a record and report of sales.

Sec. 5. Whenever the commissioner has reason to believe that any article mentioned in section 4 does not correspond with the descriptions and limitations therein provided, he shall cause an analysis of said article to be made, and if, upon such analysis, the commissioner shall find that said article does not so correspond, he shall give not less than fifteen days notice in writing to the person who is the manufacturer thereof to show cause why the said article should not be dealt with as an intoxicating liquor, such notice to be served personally or by registered mail, as the commissioner may determine, and shall specify the time when, the

place where, and the name of the agent or official before whom such person is required to appear.

If the manufacturer of said article fails to show to the satisfaction of the commissioner that the article corresponds to the descriptions and limitations provided in section 4 of this Title, his permit to manufacture and sell such article shall be revoked. The manufacturer may by appropriate proceeding in a court of equity have the action of the commissioner reviewed, and the court may affirm, modify, or reverse the finding of the commissioner as the facts and law of the case may warrant, and during the pendency of such proceedings may restrain the manufacture, sale, or other disposition of such article.

Sec. 6. No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the commissioner so to do, except that a person may, without a permit, purchase and use liquor for medicinal purposes when prescribed by a physician as herein provided, and except that any person who in the opinion of the commissioner is conducting a bona fide hospital or sanitorium engaged in the treatment of persons suffering from alcoholism, may, under such rules, regulations, and conditions as the commissioner shall prescribe, purchase and use, in accordance with the methods in use in such institution, liquor, to be administered to the patients of such institution under the direction of a duly qualified physician employed by such institution.

All permits to manufacture, prescribe, sell, or transport liquor may be issued for one year, and shall expire on the 31st day of December next succeeding the issuance thereof: *Provided*, That the commissioner may without formal application or new bond extend any permit granted under this Act or laws now in force after August 31 in any year to December 31 of the succeeding year: *Provided*, further, That permits to purchase liquor for the purpose of manufacturing or selling as provided in this Act shall not be in force to exceed ninety days from the day of issuance. A permit to purchase liquor for any other purpose shall not be in force to exceed thirty days. Permits to purchase liquor shall specify the quantity and kind to be purchased and the purpose for which it is to be used. No permit shall be issued to any person who within one year prior to the application therefor or issuance thereof shall have violated the terms of any per-

mit issued under this Title or any law of the United States or of any State regulating traffic in liquor. No permit shall be issued to any one to sell liquor at retail, unless the sale is to be made through a pharmacist designated in the permit and duly licensed under the laws of his State to compound and dispense medicine prescribed by a duly licensed physician. No one shall be given a permit to prescribe liquor unless he is a physician duly licensed to practice medicine and actively engaged in the practice of such profession. Every permit shall be in writing, dated, when issued, and signed by the commissioner or his authorized agent. It shall give the name and address of the person to whom it is issued and shall designate and limit the acts that are permitted and the time when and place where such acts may be performed. No permit shall be issued until a verified, written application shall have been made therefor, setting forth the qualification of the applicant and the purpose for which the liquor is to be used.

The commissioner may prescribe the form of all permits and applications and the facts to be set forth therein. Before any permit is granted the commissioner may require a bond in such form and amount as he may prescribe to insure compliance with the terms of the permit and the provisions of this title. In the event of the refusal by the commissioner of any application for a permit, the applicant may have a review of his decision before a court of equity in the manner provided in section 5 hereof.

Nothing in this title shall be held to apply to the manufacture, sale, transportation, importation, possession, or distribution of wine for sacramental purposes, or like religious rites, except section 6 (save as the same requires a permit to purchase) and section 10 hereof, and the provisions of this Act prescribing penalties for the violation of either of said sections. No person to whom a permit may be issued to manufacture, transport, import, or sell wines for sacramental purposes or like religious rites shall sell, barter, exchange, or furnish any such to any person not a rabbi, minister of the gospel, priest, or an officer duly authorized for the purpose yb any church or congregation, nor to any such except upon an application duly subscribed by him, which application, authenticated as regulations may prescribe, shall be filed and preserved by the seller. The head of any conference or diocese or other ecclesiastical jurisdiction may designate any rabbi, minister, or priest to supervise the manufacture of wine

to be used for the purposes and rites in this section mentioned and the person so designated may, in the discretion of the commissioner, be granted a permit to supervise such manufacture.

Sec. 7. No one but a physician holding a permit to prescribe liquor shall issue any prescription for liquor. And no physician shall prescribe liquor unless after careful physical examination of the person for whose use such prescription is sought, or if such examination is found impracticable, then upon the best information obtainable, he in good faith believes that the use of such liquor as a medicine by such person is necessary and will afford relief to him from some known ailment. Not more than a pint of spirituous liquor to be taken internally shall be prescribed for use by the same person within any period of ten days and no prescription shall be filled more than once. Any pharmacist filling a prescription shall at the time indorse upon it over his own signature the word "canceled," together with the date when the liquor was delivered, and then make the same a part of the record that he is required to keep as herein provided.

Every physician who issues a prescription for liquor shall keep a record, alphabetically arranged in a book prescribed by the commissioner, which shall show the date of issue, amount prescribed, to whom issued, the purpose or ailment for which it is to be used and directions for use, stating the amount and frequency of the dose.

Sec. 8. The commissioner shall cause to be printed blanks for the prescriptions herein required, and he shall furnish the same, free of cost, to physicians holding permits to prescribe. The prescription blanks shall be printed in book form and shall be numbered consecutively from one to one hundred, and each book shall be given a number, and the stubs in each book shall carry the same numbers as and be copies of the prescriptions. The books containing such stubs shall be returned to the commissioner when the prescription blanks have been used, or sooner, if directed by the commissioner. All unused, mutilated, or defaced blanks shall be returned with the book. No physician shall prescribe and no pharmacist shall fill any prescription for liquor except on blanks so provided, except in cases of emergency, in which event a record and report shall be made and kept as in other cases.

Sec. 9. If at any time there shall be filed with the commissioner a complaint under oath setting forth facts showing, or if the commissioner has reason to believe, that any person who has a permit is not in good faith conforming to the provisions of this Act, or has violated the laws of any State relating to intoxicating liquor, the commissioner or his agent shall immediately issue an order citing such person to appear before him on a day named not more than thirty and not less than fifteen days from the date of service upon such permittee of a copy of the citation, which citation shall be accompanied by a copy of such complaint, or in the event that the proceedings be initiated by the commissioner with a statement of the facts constituting the violation charged, at which time a hearing shall be had unless continued for cause. Such hearings shall be held within the judicial district and within fifty miles of the place where the offense is alleged to have occurred, unless the parties agree on another place. If it be found that such person has been guilty of wilfully violating any such laws, as charged, or has not in good faith conformed to the provisions of this Act, such permit shall be revoked, and no permit shall be granted to such person within one year thereafter. Should the permit be revoked by the commissioner, the permittee may have a review of his decision before a court of equity in the manner provided in section 5 hereof. During the pendency of such action such permit shall be temporarily revoked.

Sec. 10. No person shall manufacture, purchase for sale, sell, or transport any liquor without making at the time a permanent record thereof showing in detail the amount and kind of liquor manufactured, purchased, sold, or transported, together with the names and addresses of the persons to whom sold, in case of sale, and the consignor and consignee in case of transportation, and the time and place of such manufacture, sale, or transportation. The commissioner may prescribe the form of such record, which shall at all times be open to inspection as in this Act provided.

Sec. 11. All manufacturers, and wholesale or retail druggists shall keep as a part of the records required of them a copy of all permits to purchase on which a sale of any liquor is made, and no manufacturer or wholesale druggist shall sell or otherwise

dispose of any liquor except at wholesale and only to persons having permits to purchase in such quantities.

Sec. 12. All persons manufacturing liquor for sale under the provisions of this title shall securely and permanently attach to every container thereof, as the same is manufactured, a label stating name of manufacturer, kind and quantity of liquor contained therein, and the date of its manufacture, together with the number of the permit authorizing the manufacture thereof; and all persons possessing such liquor in wholesale quantities shall securely keep and maintain such label thereon; and all persons selling at wholesale shall attach to each package of liquor, when sold, a label setting forth the kind and quantity of liquor contained therein, by whom manufactured, the date of sale, and the person to whom sold; which label shall likewise be kept and maintained thereon until the liquor is used for the purpose for which such sale was authorized.

Sec. 13. It shall be the duty of every carrier to make a record at the place of shipment of the receipt of any liquor transported, and he shall deliver the liquor only to persons who present to the carrier a verified copy of a permit to purchase which shall be made a part of the carrier's permanent record at the office from which delivery is made.

The agent of the common carrier is hereby authorized to administer the oath to the consignee in verification of the copy of the permit presented, who, if not personally known to the agent, shall be identified before the delivery of the liquor to him. The name and address of the person identifying the consignee shall be included in the record.

Sec. 14. It shall be unlawful for any person to use or induce any carrier, or any agent or employee thereof, to carry or ship any package or receptacle containing liquor without notifying the carrier of the true nature and character of the shipment. No carrier shall transport nor shall any person receive liquor from a carrier unless there appears on the outside of the package containing such liquor the following information:

Name and address of the consignor or seller, name and address of the consignee, kind and quantity of liquor contained therein, and number of the permit to purchase or ship the same, together with the name and address of the person using the permit.

Sec. 15. It shall be unlawful for any consignee to accept or receive any package containing any liquor upon which appears a statement known to him to be false, or for any carrier or other person to consign, ship, transport, or deliver any such package, knowing such statement to be false.

Sec. 16. It shall be unlawful to give to any carrier or any officer, agent, or person acting or assuming to act for such carrier an order requiring the delivery to any person of any liquor or package containing liquor consigned to, or purporting or claimed to be consigned to a person, when the purpose of the order is to enable any person not an actual bona fide consignee to obtain such liquor.

Sec. 17. It shall be unlawful to advertise anywhere, or by any means or method, liquor, or the manufacture, sale, keeping for sale or furnishing the same, or where, how, from whom, or at what price the same may be obtained. No one shall permit any sign or billboard containing such advertisement to remain upon one's premises. But nothing herein shall prohibit manufacturers and wholesale druggists holding permits to sell liquor from furnishing price lists, with description of liquor for sale, to persons permitted to purchase liquor, or from advertising alcohol in business publications or trade journals circulating generally among manufacturers of lawful alcoholic perfumes, toilet preparations, flavoring extracts, medicinal preparations, and like articles: *Provided, however,* That nothing in this Act or in the Act making appropriations for the Post Office Department, ap-appropriations for the Post Office Department, approved March proved March 3, 1917 (Thirty-ninth Statutes at Large, Part 1, page 1058, *et seq.*), shall apply to newspapers published in foreign countries when mailed to this country.

Sec. 18. It shall be unlawful to advertise, manufacture, sell, or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula direction, or recipe advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor.

Sec. 19. No person shall solicit or receive, nor knowingly permit his employee to solicit or receive, from any person any order for liquor or give any information of how liquor may be obtained in violation of this Act.

Sec. 20. Any person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of the intoxication of any person, whether resulting in his death or not, shall have a right of action against any person who shall, by unlawfully selling to or unlawfully assisting in procuring liquor for such intoxicated person, have caused or contributed to such intoxication, and in any such action such person shall have a right to recover actual and exemplary damages. In case of the death of either party, the action or right of action given by this section shall survive to or against his or her executor or administrator, and the amount so recovered by either wife or child shall be his or her sole and separate property. Such action may be brought in any court of competent jurisdiction. In any case where parents shall be entitled to such damages, either the father or mother may sue alone therefor, but recovery by one of such parties shall be a bar to suit brought by the other.

Sec. 21. Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or be imprisoned for not more than one year, or both. If a person has knowledge or reason to believe that his room, house, building, boat, vehicle, structure, or place is occupied or used for the manufacture or sale of liquor contrary to the provisions of this title, and suffers the same to be so occupied or used, such room, house, building, boat, vehicle, structure, or place shall be subject to a lien for and may be sold to pay all fines and costs assessed against the person guilty of such nuisance for such violation, and any such lien may be enforced by action in any court having jurisdiction.

Sec. 22. An action to enjoin any nuisance defined in this title may be brought in the name of the United States by the Attorney General of the United States or by any United States attorney or any prosecuting attorney of any State or any subdivision thereof or by the commissioner or his deputies or assistants. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and de-

termine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the liquor or fixtures, or other things used in connection with the violation of this Act constituting such a nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquors shall be manufactured, sold. bartered, or stored in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one year thereafter: but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less that $500 nor more than $1,000 payable to the United States, and conditioned that intoxicating liquor will not thereafter be manufactured, sold, bartered, kept, or otherwise disposed of therein or thereon, and that he will pay all fines, costs, and damage that may be assessed for any violation of this title upon said property.

Sec. 23. That any person who shall, with intent to effect a sale of liquor, by himself, his employee, servant, or agent, for himself or any person, company, or corporation, keep or carry around on his person, or in a vehicle, or other conveyance whatever, or leave in a place for another to secure, any liquor, or who shall travel to solicit, or solicit, or take, or accept orders for the sale, shipment, or delivery of liquor in violation of this title is guilty of a nuisance and may be restrained by injunction, temporary and permanent, from doing or continuing to do any of said acts or things.

In such proceedings it shall not be necessary to show any intention on the part of the accused to continue such violations if the action is brought within sixty days following any such violation of the law.

For removing and selling property in enforcing this Act the officer shall be entitled to charge and receive the same fee as the sheriff of the county would receive for levying upon and selling property under execution, and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court.

Any violation of this title upon any leased premises by the lessee or occupant thereof shall, at the option of the lessor, work a forfeiture of the lease.

Sec. 24. In the case of the violation of any injunction, temporary or permanent, granted pursuant to the provisions of this title, the court, or in vacation the judge thereof, may summarily try and punish the defendant. The proceedings for punishment for contempt shall be commenced by filing with the clerk of the court from which such injunction issued information under oath setting out the alleged facts constituting the violation, whereupon the court or judge shall forthwith cause a warrant to issue under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. Any person found guilty of contempt under the provisions of this section shall be punished by a fine of not less than $500 nor more than $1,000, or by imprisonment of not less than thirty days nor more than twelve months, or by both fine and imprisonment.

Sec. 25. It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in Title XI of public law numbered 24 of the Sixty-fifth Congress, approved June 15, 1917. and such liquor, the containers thereof, and such property so seized shall be subject to such disposition as the court may make thereof. If it is found that such liquor or property was so unlawfully held or possessed, or had been so unlawfully used, the liquor, and all property designed for the unlawful manufacture of liquor, shall be destroyed, unless the court shall otherwise order. No search warrant shall issue to search any private dwel-

ling occupied as such unless it is being used for the unlawful sale of intoxicating liquor, or unless it is in part used for some business purpose such as a store, shop, saloon, resturant, hotel, or boarding house. The term "private dwelling" shall be construed to include the room or rooms used and occupied not transiently but solely as a residence in an apartment house, hotel, or boarding house. The property seized on such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process.

Sec. 26. When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this title in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts. All liens against property sold under the provisions of

this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in such city or county where taken or if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by hand-bills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold and the proceeds after deducting the expenses and costs shall be paid into the Treasury of the United States as miscellaneous receipts.

Sec. 27. In all cases in which intoxicating liquors may be subject to be destroyed under the provisions of this Act the court shall have jurisdiction upon the application of the United States attorney to order them delivered to any department or agency of the United States Government for medical, mechanical, or scientific purposes, or to order the same sold to private sale for such purposes to any person having a permit to purchase liquor the proceeds to be covered into the Treasury of the United States to the credit of miscellaneous receipts, and all liquor heretofore seized in any suit or proceeding brought for violation of law may likewise be so disposed of, if not claimed within sixty days from the date this section takes effect.

Sec. 28. The commissioner, his assistants, agents, and inspectors, and all other officers of the United States, whose duty it is to enforce criminal laws, shall have all the power and protection in the enforcement of this Act or any provisions thereof which is conferred by law for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquors under the law of the United States.

Sec. 29. Any person who manufactures or sells liquor in violation of this title shall for a first offense be fined not more than $1,000, or imprisoned not exceeding six months, and for a second or subsequent offense shall be fined not less than $200 nor more than $2,000 and be imprisoned not less that one month nor more than five years.

Any person violating the provisions of any permit, or who makes any false record, report, or affidavit required by this

title, or violates any of the provisions of this title, for which offense a special penalty is not prescribed, shall be fined for the first offense not more than $500; for a second offense not less than $100 nor more than $1,000, or be imprisoned not more than ninety days; for any subsequent offense he shall be fined not less that $500 and be imprisoned not less that three months nor more than two years. It shall be the duty of the prosecuting officer to ascertain whether the defendant has been previously convicted and to plead the prior conviction in the affidavit, information, or indictment. The penalties provided in this Act against the manufacture of liquor without a permit shall not apply to a person for manufacturing nonintoxicating cider and fruit juices exclusively for use in his home, but such cider and fruit juices shall not be sold or delivered except to persons having permits to manufacture vinegar.

Sec. 30. No person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence in obedience to a subpœna of any court in any suit or proceedings based upon or growing out of any alleged violation of this Act; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpœna and under oath, he may so testify or produce evidence, but no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 31. In case of a sale of liquor where the delivery thereof was made by a common or other carrier the sale and delivery shall be deemed to be made in the county or district wherein the delivery was made by such carrier to the consignee, his agent or employee, or in the county or district wherein the sale was made, or from which the shipment was made, and prosecution for such sale or delivery may be had in any such county or district.

Sec. 32. In any affidavit, information or indictment for the violation of this Act, separate offenses may be united in separate counts and the defendant may be tried on all at one trial and the penalty for all offenses may be imposed. It shall not be necessary in any affidavit, information, or indictment to give the

name of the purchaser or to include any defensive negative averments, but it shall be sufficient to state that the act complained of was then and there prohibited and unlawful, but this provision shall not be construed to preclude the trial court from directing the furnishing the defendant a bill of particulars when it deems it proper to do so.

Ses. 33. After February 1st, 1920, the possession of liquors by any persons not legally permitted under this title to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title. Every person legally permitted under this title to have liquor shall report to the commissioner within ten days after the date when the eighteenth amendment of the Constitution of the United States goes into effect, the kind and amount of intoxicating liquors in his possession. But it shall not be unlawful to possess liquors in one's private dwelling while the same is occupied and used by him as his dwelling only and such liquor need not be reported, provided such liquors are for use only for the personal consumption of the owner thereof and his family residing in such dwelling and of his bona fide guests when entertained by him therein; and the burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed, and used.

Sec. 34. All records and reports kept or filed under the provisions of this Act shall be subject to inspection at any reasonable hour by the commissioner or any of his agents or by any public prosecutor or by any person designated by him, or any peace officer in the State where the record is kept, and copies of such records and reports duly certified by the person with whom kept or filed may be introduced in evidence with like effect as the originals thereof, and verified copies of such records shall be furnished to the commissioner when called for.

Sec. 35. All provisions of law that are inconsistent with this Act are repealed only to the extent of such inconsistency and the regulations herein provided for the manufacture or traffic in intoxicating liquor shall be construed as in addition to existing laws. This Act shall not relieve any one from paying any taxes or other charges imposed upon the manufacture or traffic in such liquor. No liquor revenue stamps or tax receipts for

any illegal manufacture or sale shall be issued in advance, but upon evidence of such illegal manufacture or sale a tax shall be assessed against, and collected from, the person responsible for such illegal manufacture or sale in double the amount now provided by law, with an additional penalty of $500 on retail dealers and $1,000 on manufacturers. The payment of such tax or penalty shall give no right to engage in the manufacture or sale of such liquor, or relieve anyone from criminal liability, nor shall this Act relieve any person from any liability, civil or criminal, heretofore or hereafter incurred under existing laws.

The commissioner, with the approval of the Secretary of the Treasury, may compromise any civil cause arising under this title before bringing action in court; and with the approval of the Attorney General he may compromise any such cause after action thereon has been commenced.

Sec. 36. If any provision of this Act shall be held invalid it shall not be construed to invalidate other provisions of the Act.

Sec. 37. Nothing herein shall prevent the storage in United States bonded warehouses of all liquor manufactured prior to the taking effect of this act, or prevent the transportation of such liquor to such warehouses or to any wholesale druggist for sale to such druggist for purposes not prohibited when the tax is paid, and permits may be issued therefor.

A manufacturer of any beverage containing less than one-half of 1 per centum of alcohol by volume may, on making application and giving such bond as the commissioner shall prescribe, be given a permit to develop in the manufacture thereof by the usual methods of fermentation and fortification or otherwise a liquid such as beer, ale, porter, or wine, containing more than one-half of 1 per centum of alcohol by volume, but before any such liquid is withdrawn from the factory or otherwise disposed of the alcoholic contents thereof shall under such rules and regulations as the commissioner may prescribe be reduced below such one-half of 1 per centum of alcohol: *Provided*, That such liquid may be removed and transported, under bond and under such regulations as the commissioner may prescribe, from one bonded plant or warehouse to another for the purpose of having the alcohol extracted therefrom. And such liquids may be developed, under permit, by persons other than the manufacturers of beverages containing less than one-half of 1 per

centum of alcohol by volume, and sold to such manufacturers for conversion into such beverages. The alcohol removed from such liquid, if evaporated and not condensed and saved, shall not be subject to tax; if saved, it shall be subject to the same law as other alcoholic liquors. Credit shall be allowed on the tax due on any alcohol so saved to the amount of any tax paid upon distilled spirits or brandy used in the fortification of the liquor from which the same is saved.

When fortified wines are made and used for the production of non-beverage alcohol, and dealcoholized wine containing less than one-half of 1 per centum of alcohol by volume, no tax shall be assessed or paid on the spirits used in such fortification, and such dealcholized wines produced under the provisions of this Act, whether carbonated or not, shall not be subject to the tax on artificially carbonated or sparkling wines, but shall be subject to the tax on still wines only.

In any case where the manufacturer is charged with manufacturing or selling for beverage purposes any malt, vinous, or fermented liquids containing one-half of 1 per centum or more of alcohol by volume, or in any case where the manufacturer, having been permitted by the commissioner to develop a liquid such as ale, beer, porter, or wine containing more than one-half of 1 per centum of alcohol by volume in the manner and for the purposes herein provided, is charged with failure to reduce the alcoholic content of any such liquid below such one-half of 1 per centum before withdrawing the same from the factory, then in either case the burden of proof shall be on such manufacturer to show that such liquid so manufactured, sold, or withdrawn contains less than one-half of 1 per centum of alcohol by volume. In any suit or proceeding involving the alcoholic content of any beverage, the reasonable expense of analysis of such beverage shall be taxed as costs in the case.

Sec. 38. The Commissioner of Internal Revenue and the Attorney General of the United States are hereby respectively authorized to appoint and employ such assistants, experts, clerks, and other employees in the District of Columbia, or elsewhere, and to purchase such supplies and equipment as they may deem necessary for the enforcement of the provisions of this Act, but such assistants, experts, clerks, and other employees, except such executive officers as may be appointed by the Commissioner or

the Attorney General to have immediate direction of the enforcement of the provisions of this Act, and persons authorized to issue permits, and agents and inspectors in the field service, shall be appointed under the rules and regulations prescribed by the Civil Service Act: *Provided,* That the Commissioner and Attorney General in making such appointments shall give preference to those who have served in the military or naval service in the recent war if otherwise qualified, and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sum as may be required for the enforcement of this Act including personal services in the District of Columbia, and for the fiscal year ending June 30, 1920, there is hereby appropriated out of any money in the Treasury not otherwise appropriated, the sum of $2,000,000 for the use of the Commissioner of Internal Revenue and $100,000 for the use of the Department of Justice for the enforcement of the provisions of this Act, including personal services in the District of Columbia and necessary printing and binding.

Sec. 39. In all cases wherein the property of any citizen is proceeded against or wherein a judgment affecting it might be rendered, and the citizen is not the one who in person violated the provisions of the law, summons must be issued in due form and served personally, if said person is to be found within the jurisdiction of the court.

## TITLE III.

### INDUSTRIAL ALCOHOL.

Sec. 1. When used in this title—

The term "alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or whatever processes produced.

The term "container" includes any receptacle, vessel, or form of package, tank, or conduit used or capable of use for holding storing, transferring, or shipment of the alcohol.

### INDUSTRIAL ALCOHOL PLANTS AND WAREHOUSES.

Sec. 2. Any person now producing alcohol shall, within thirty days after the passage of this Act, make application to the commissioner for registration of his industrial alcohol plant, and as

soon thereafter as practicable the premises shall be bonded and permit may issue for the operation of such plant, and any person hereafter establishing a plant for the production of alcohol shall likewise before operation make application, file bond, and receive permit.

Sec. 3. Warehouses for the storage and distribution of alcohol to be used exclusively for other than beverage purposes may be established upon filing of application and bond, and issuance of permit at such place, either in connection with the manufacturing plant or elsewhere, as the commissioner may determine; and the entry and storage of alcohol therein, and the withdrawals of alcohol therefrom shall be made in such containers and by such means as the commissioner by regulation may prescribe.

Sec. 4. Alcohol produced at any registered industrial alcohol plant or stored in any bonded warehouse may be transferred under regulations to any other registered industrial alcohol plant or bonded warehouse for any lawful purpose.

Sec. 5. Any tax imposed by law upon alcohol shall attach to such alcohol as soon as it is in existence as such, and all proprietors of industrial alcohol plants and bonded warehouses shall be jointly and severally liable for any and all taxes on any and all alcohol produced thereat or stored therein. Such taxes shall be a first lien on such alcohol and the premises and plant in which such alcohol is produced or stored, together with all improvements and appurtenances thereunto belonging or in any wise appertaining.

Sec. 6. Any distilled spirits produced and fit for beverage purposes remaining in any bonded warehouse on or before the date when the eighteenth amendment of the Constitution of the United States goes into effect, may, under regulations, be withdrawn therefrom either for denaturation at any bonded denaturing plant or for deposit in a bonded warehouse established under this Act; and when so withdrawn if not suitable as to proof, purity, or quality for other than beverage purposes, such distilled spirits shall be redistilled, purified, and changed in proof so as to render such spirits suitable for other purposes. and having been so treated may thereafter be denatured or sold in accordance with the provisions of this Act.

Sec. 7. Any distillery or bonded warehouse heretofore legally established may, upon filing application and bond and the grant-

ing of permit, be operated as an industrial alcohol plant or bonded warehouse under the provisions of this title and regulations made thereunder.

Sec. 8. Alcohol may be produced at any industrial alcohol plant established under the provisions of this title, from any raw materials or by any processes suitable for the production of alcohol, and, under regulations, may be used at any industrial alcohol plant or bonded warehouse or sold or disposed of for any lawful purpose, as in this Act provided.

Sec. 9. Industrial alcohol plants and bonded warehouses established under the provisions of this title shall be exempt from the provisions of sections 3154, 3244, 3258, 3259, 3260, 3263, 3264, 3266, 3267, 3268, 3269, 3271, 3273, 3274, 3275, 3279, 3280, 3283, 3284, 3285, 3286, 3287, 3288, 3289, 3290, 3291, 3292, 3293, 3294, 3295, 3302, 3303, 3307, 3308, 3309, 3310, 3311, 3312, 3313, 3314, and 3327 of the Revised Statutes, sections 48 to 60, inclusive, and sections 62 and 67 of the Act of August 27, 1894 (Twenty-eighth Statutes, pages 563 to 568), and from such other provisions of existing laws relating to distilleries and bonded warehouses as may, by regulations, be declared inapplicable to industrial alcohol plants and bonded warehouses established under this Act.

Regulations may be made embodying any provision of the sections above enumerated.

### TAX-FREE ALCOHOL.

Sec. 10. Upon the filing of application and bond and issuance of permit denaturing plants may be established upon the premises of any industrial alcohol plant, or elsewhere, and shall be used exclusively for the denaturation of alcohol by the admixture of such denaturing materials as shall render the alcohol, or any compound in which it is authorized to be used, unfit for use as an intoxicating beverage.

Alcohol lawfully denatured may, under regulations, be sold free of tax either for domestic use or for export.

Nothing in this act shall be construed to require manufacturers of distilled vinegar to raise the proof of any alcohol used in such manufacture or to denature the same.

Sec. 11. Alcohol produced at any industrial alcohol plant or stored in any bonded warehouse may, under regulations, be-

withdrawn tax free as provided by existing law from such plant or warehouse for transfer to any denaturing plant for denaturation, or may, under regulations, before or after denaturation, be removed from any such plant or warehouse for any lawful tax-free purpose.

Spirits of less proof than one hundred and sixty degrees may, under regulations, be deemed to be alcohol for the purpose of denaturation, under the provisions of this title.

Alcohol, may be withdrawn, under regulations, from any industrial plant or bonded warehouse tax free by the United States or any government agency thereof, or by the several States and Territories or any municipal subdivision thereof or by the District of Columbia, or for the use of any scientific university or college of learning, any laboratory for use exclusively in scientific research, or for use in any hospital or sanatorium.

But any person permitted to obtain alcohol tax free, except the United States and the several States and Territories and subdivisions thereof, and the District of Columbia, shall first apply for and secure a permit to purchase the same and give the bonds prescribed under title II of this Act, but alcohol withdrawn for nonbeverage purposes for use of the United States and the several States, Territories and subdivisions thereof, and the District of Columbia may be purchased and withdrawn subject only to such regulations as may be prescribed.

## GENERAL PROVISIONS.

Sec. 12. The penalties provided in this title shall be in addition to any penalties provided in title 2 of this Act, unless expressly otherwise therein provided.

Sec. 13. The commissioner shall from time issue regulations respecting the establishment, bonding, and operation of industrial alcohol plants, denaturing plants, and bonded warehouses authorized herein, and the distribution, sale, export, and use of alcohol which may be necessary, advisable, or proper, to secure the revenue, to prevent diversion of the alcohol to illegal uses, and to place the nonbeverage alcohol industry and other industries using such alcohol as a chemical raw material or for other lawful purposes upon the highest possible plane of scientific and commercial efficiency consistent with the interests of the Government, and which shall insure an ample supply of such alcohol and promote its use in scientific research and the development of fuels, dyes, and other lawful products.

Sec. 14. Whenever any alcohol is lost by evaporation or other shrinkage, leakage, casualty, or unavoidable cause during distillation, redistillation, denaturation, withdrawal, piping, shipment, warehousing, storage, packing, transfer, or recovery, of any such alcohol the commissioner may remit or refund any tax incurred under existing law upon such alcohol, provided he is satisfied that the alcohol has not been diverted to any illegal use: *Provided, also* That such allowance shall not be granted if the person claiming same is indemnified against such loss by a valid claim of insurance.

Sec. 15. Whoever operates an industrial alcohol plant or a denaturing plant without complying with the provisions of this title and lawful regulations made thereunder, or whoever withdraws or attempts to withdraw or secure tax free any alcohol subject to tax, or whoever otherwise violates any of the provisions of this title or of regulations lawfully made thereunder shall be liable, for the first offense, to a penalty of not exceeding $1,000, or imprisonment not exceeding thirty days, or both, and for a second or cognate offense to a penalty of not less than $100 nor more than $10,000, and to imprisonment of not less than thirty days nor more than one year. It shall be lawful for the commissioner in all cases of second or cognate offense to refuse to issue for a period of one year a permit for the manufacture or use of alcohol upon the premises of any person responsible in any degree or the violation.

Sec. 16. Any tax payable upon alcohol under existing law may be collected either by assessment or by stamp as regulations shall provide; and if by stamp, regulations shall issue prescribing the kind of stamp to be used and the manner of affixing and canceling the same.

Sec. 17. When any property is seized for violation of this title it may be released to the claimant or to any intervening party, in the discretion of the commissioner, on a bond given and approved.

Sec. 18. All administrative provisions of internal-revenue law, including those relating to assessment, collection, abatement, and refund of taxes and penalties, and the seizure and forfeiture of property, are made applicable to this title in so far as they are not inconsistent with the provisions thereof.

Sec. 19. All prior statutes relating to alcohol as defined in

this title are hereby repealed in so far as they are inconsistent with the provisions of this title.

Sec. 20. That it shall be unlawful to import or introduce into the Canal Zone or to manufacture, sell, give away, dispose of, transport, or have in one's possession or under one's control within the Canal Zone, any alcoholic, fermented, brewed, distilled, vinous, malt, or spirituous liquors, except for sacramental, scientific pharmaceutical, industrial, or medicinal purposes, under regulations to be made by the President, and any such liquors within the Canal Zone in violation hereof shall be forfeited to the United States and seized: *Provided,* That this section shall not apply to liquor in transit through the Panama Canal or on the Panama Railroad.

That each and every violation of any of the provisions of this section shall be punished by a fine of not more than $1,000 or imprisonment not exceeding six months for a first offense, and by a fine of not less than $200 nor more than $2,000 and imprisonment not less than one month or more than five years for a second or subsequent offense.

That all offenses heretofore committed within the Canal Zone may be prosecuted and all penalties therefor enforced in the same manner and to the same extent as if this Act had not been passed.

Sec. 21. Titles I and III and sections 1, 27, 37, and 38 of Title II of this Act shall take effect and be in force from and after the passage and approval of the Act. The other sections of Title II shall take effect and be in force from and after the date when the eighteenth amendment of the Constitution of the United States goes into effect.

This statute became a law October 28, 1919 having been passed over the Presidents' veto. For decisions relating to this act, see: George S. Hawke v. Harvey C. Smith, 252, U. S. —, 64 L. Ed. ——, 40 Sup. Ct. ——; same, 252 U. S. — 64 L. Ed. ——, 40 Sup. Ct. ——; State of Rhode Island v. A. Mitchell Palmer; State of New Jersey v. A. Mitchell Palmer; George v. Dempsey v. Thomas J. Boynton; Kentucky Distilleries & Warehouse Co. v. W. V. Gregory; Christian Feigenspan v. Joseph L. Bodine; Hiram A. Sawyer v. Manitowoc Products Co.; St. Louis Brewing Asso. v. George H. Moore, 252 U. S. ——, 64 L. Ed. ——, 40 Sup. Ct.——.

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* 40 Stat. L. 1290 amending Section 6 par. 5 of Federal Control Act provides:

No provision of this Act shall be construed to prevent the routing of freight by a shipper or consignee over any inland canal or coast-wise waterway, or a part way over such waterway and a part way by rail. In case the shipper or consignee shall so route the freight, no provision of this Act shall be construed as giving power to change the routing.

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